Supreme Court, U. S.
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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-1462

MARK WHITE, ET AL.,
*Appellants*

V.

DIANA REGESTER, ET AL.,
*Appellees*

MARK WHITE, JR., ET AL.,
*Appellants*

V.

WANDA CHAPMAN, ET AL.,
*Appellees*

MARK WHITE, ET AL.,
*Appellants*

V.

FRANK A. ESCALANTE, ET AL.,
*Appellees*

MARK WHITE, ET AL.,
*Appellants*

V.

JAMES GASKIN, ET AL.,
*Appellees*

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

## APPELLANTS' BRIEF ON THE MERITS

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## APPELLANTS' BRIEF ON THE MERITS

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## OPINION BELOW

The opinion and order of the Court below are not yet reported. They were issued on January 28, 1974. They were reproduced in a separately bound Appendix to the Jurisdictional Statement as Exhibit A. The order of this Court's staying the judgement, on application by Appellant, to Mr. Justice Powell is reproduced in the separately bound Appendix to the Jurisdictional Statement as Exhibit C. This Court's denial of the motion of Appellees to vacate the stay is reproduced in the separately bound Appendix to the Jurisdictional Statement as Exhibit D.

## JURISDICTION

The actions below were originally brought by Plaintiffs Regester, et al. to enjoin enforcement of a statute of the State of Texas enacted by the Legislative Redistricting Board of Texas pursuant to Article III, §28 of the Texas Constitution. Jurisdiction of the three judge district court was invoked under 28 USC §1343 and 2281. On January 28, 1972 the three judge court issued its opinion holding unconstitutionally high population variations in the House apportionment plan, and ordering the implementation of single-member districts in Dallas and Bexar Counties for the approaching 1972 elections. *Graves v. Barnes,* 343 F. Supp. 704 (W. D. Tex. 1972). That decision was appealed to the Supreme Court. On June 18, 1973, the



Supreme Court reversed the lower court holding that the population variations were unconstitutional and affirmed that portion of the decision requiring single member districts in Dallas and Bexar Counties. *White v. Regester,* 412 U. S. 755 (1973). The Supreme Court then remanded the case for further proceedings in conformity with the opinion of the Court. On remand, the original Plaintiffs Regester as well as Plaintiffs Escalante, Gaskin, and Chapman sought to enjoin the enforcement of the apportionment statute for the State of Texas into representative districts in nine multi-member districts. Intervention was allowed in the original and new suits. The three judge court for the original suit issued its opinion after hearing on remand on January 28, 1974 implementing plans for single member districts in seven multi-member districts for 1974 elections and denying a stay. Notice of Appeal was field January 30, 1974 in the United States Court for the Western District of Texas, Austin Division.

Application for a stay of that portion of the lower court's judgment immediately implementing single-member district plans in seven districts (Districts 7, 32, 35, 37, 48, 72 and 75) was presented to Mr. Justice Powell and granted by him on February 2, 1974 without opinion. A motion to vacate the stay was denied by the Supreme Court on February 7, 1974 without opinion. The jurisdiction of this Court to review the judgment of the District Court is founded on 28 USC §1253 and 1201 (b). Jurisdiction is supported by *Swan v.*

*Adams*, 385 U. S. 440 (1967), *Reynolds v. Sims*, 377 U. S. 533 (1964), *Whitcomb v. Chavis*, 403 U. S. 124 (1971), and *White v. Regester*, supra.

This Court noted probable jurisdiction on May 28, 1974.

## QUESTIONS PRESENTED

I. WHETHER THE CONSTITUTIONAL STANDARDS FOR MULTI-MEMBER DISTRICTS AS ESTABLISHED BY THE SUPREME COURT OF THE UNITED STATES WERE IMPROPERLY CONSTRUED AND APPLIED BY THE MAJORITY BELOW?

II. WHETHER THE EVIDENCE PRESENTED IN THIS PROCEEDING IS SUFFICIENT TO OVERCOME THE PRESUMPTION OF CONSTITUTIONALITY OF THE TEXAS HOUSE OF REPRESENTATIVES APPORTIONMENT PLAN AND FIND AN UNCONSTITUTIONAL GERRYMANDER OF DISTRICT 17?

III. WHETHER THE MAJORITY IMPROPERLY PREEMPTED THE LEGISLATIVE FUNCTION OF REAPPORTIONMENT AND IMPROPERLY IMPOSED REMEDIAL PLANS SUMMARILY CHOSEN FROM A NUMBER OF ATERNATIVES OFFERED WITHOUT ANY FINDINGS AS TO THE STANDARDS OR REASONS FOR THE CHOICE?



## STATUTE INVOLVED

The statute involved is the Apportionment of the State into Representative Districts, as enacted by the Legislative Redistricting Board. This statute is not published. It is printed in the Appendix to the Jurisdictional Statement as Exhibit B.

## STATEMENT

This case involves the second round in an attack on the constitutionality of the Texas plan for apportionment of the Texas House of Representatives. The Texas House of Representatives is composed of 150 members. The average population for a Texas House of Representatives district is 74,645 people. The existing Texas plan for apportionment results in 31 members of the House elected from multi-member districts, varying in population from 675,000 to 147,000 residents.

Mark W. White, Jr., as Secretary of State, is chief election officer of the State of Texas and Dolph Briscoe, Governor of the State of Texas, is the chief executive officer of the State. Appellees are representative plaintiffs and intervenors of the Black, Mexican American, low income and Republican residents and

voters in the nine counties in the State of Texas having multi-member State House of Representative districts.

The first round of this litigation began with consolidated cases involving the validity of the House and Senate Reapportionment Acts and of the Texas Legislative Redistricting Board in 1971. The three judge federal district court sustained the Senate Reapportionment Plan and held that the House Plan contained deviations of population equality and two multi-member districts (Dallas and Bexar Counties) which were constitutionally invalid. *Graves v. Barnes,* supra. On June 18, 1973, the United States Supreme Court reversed the lower court insofar as the unconstitutionality of the population deviation, but affirmed the lower court's holding with regard to the multi-member districts in Dallas and Bexar Counties. *White v. Regester,* supra. The Supreme Court remanded the case to the three judge court for further proceedings in conformity with the Court's opinion. The day after the *White* opinion was rendered suit was filed by Plaintiffs Escalante in the Western District of Texas, Austin Division, attacking the constitutionality in the multi-member district in Tarrant County (District 32). Subsequently, similar suits were filed by Appellees Gaskin and Chapman attacking the constitutionality of multi-member Districts 32 and 37 (Tarrant County and Travis County), respectively. These Appellees also sought to intervene in *White* on remand. Mexican American intervenors Moreno, et al., sought to intervene in *White,* and the suit filed by Escalante.



Black intervenors Wright, et al., also sought to intervene in *White.* Appellees and Intervenor-Appellees attacked all remaining multi-member districts in the Texas House of Representatives apportionment plan. Motions to consolidate all new suits with the hearing of *White* on remand were offered. On order of the Chief Judge of the Fifth Circuit, all suits were consolidated to be heard by the same three judge panel which presided in the original *Graves* case. All interventions in the suits were granted by order of the managing judge on October 14, 1974. (R. No. 104)[1]

The nine multi-member districts contained in the Texas House of Representatives reapportionment plan were all attacked as unconstitutionally diluting the voting strength of racial and political elements in each of the districts. Additionally, Appellees Escalante, et al., alleged that the multi-member district in Tarrant County unconstitutionally discriminated against them on the basis of wealth and that the cost of running at-large in Tarrant County is so great that only the wealthy individual or individuals with wealthy support can afford to mount such a campaign.

[1] References to the record and appendices are indicated as follows:
(1) A page reference followed by a capital A (e. g., 6A) refers to the pages of the separately printed Appendix to the Jurisdictional Statement (Opinion, Order, and Dissent of Lower Court);

(2) A page reference preceded by SA (e. g., SA 10) refers to page numbers on the bottom of the page of the Single Appendix;

(3) R. No. ____ refers to the original record numbers assigned by the lower court in docket entries for A-71-CA-142 found on pages i - x of the Single Appendix.

All Appellees and Appellee-Intervenors sought to have the Court declare the nine districts unconstitutional, to enjoin their use in the 1974 election, and to order single-member districts for each of the districts for use in the 1974 elections

Trial commenced on December 3, 1973, and ended on December 4, 1973. Post trial briefs were filed. On January 21, 1974, counsel were notified by phone followed by letter, that seven of the multi-member districts would be held unconstitutional and that a hearing regarding the implementation of single-member district plans in those counties would be held January 28, 1974. On January 28, after five hours of testimony on various plans for the districts, the court announced from the bench the plans that would be ordered by the majority. The opinion and order of the majority of the court was filed January 29, 1974. The opinion and order held the seven multi-member districts unconstitutional, enjoined the use of such districts for the 1974 elections, and ordered that the 1974 elections for the House of Representatives in those districts affected be held under the plans contained in the court's opinion. John Wood, District Judge, dissented.

Defendants filed their notice of appeal with the District Clerk for the Western District of Texas on January 31, 1974. Defendants sought a stay of the order of the lower court from this court which was granted



February 2, 1974. Appellees' motion to vacate the stay was denied on February 7, 1974.

Primary elections for the Texas House of Representatives in 1974, as in 1972, were held under the apportionment plan adopted by the Texas Redistricting Board, as amended by the federal district court with regard to single-member districts in Dallas and Bexar Counties.

## SUMMARY OF ARGUMENT

The Supreme Court of the United States has ennunciated conditions of constitutional stature against which a challenge to the operation of a multi-member election district must be weighed. Through a series of cases beginning with *Fortson v. Dorsey,* 379 U. S. 433 (1965) through *White v. Regester,* supra, conditions existing in the multi-member district system which tend to enhance invidious dilution or cancellation of the voting strength of a minority group had been discussed. While some of these conditions may enhance such dilution in violation of the Fourteenth Amendment, such as extremely large districts or the failure to subdistrict provided for geographical residents, such conditions in themselves are insufficient to sustain a finding of unconstitutionality. Evidence must be produced by a challenger showing that the multi-member districts results in the political processes leading to nomination and election being less

open to participation by the minority—unequal access to the political process. What constitutes evidence relating to unequal acts has been thoughtfully evaluated by the United States Supreme Court in *Whitcomb* and followed in *White*.

The majority below has ignored substantial portions of the *Whitcomb* conclusion and apparently justified their action by improperly expanding the holding of the Supreme Court in *White*. Primarily, three of the four "factors" or tests of constitutionally relevant evidences viewed by the majority below consist of two conditions, proportional representation to elected delegates of the minority, and responsiveness of the delegation to the minority interest, previously rejected by the Supreme Court as constitutional consideration, and one condition, consistent use of racist campaign tactics, never sanctioned as constitutionally relevant in this area. Appellants will show that to further magnify the error of the majority below, selective portions of the record were utilized to support their findings, ignoring contradictory and explanatory evidence also in the record. In some instances additional "factors" were created when the evidence failed to reveal support for even the suspect "factors". In addition to the majority below's erroneous construction of the constitutional standards and selective use of the record, Appellants contend the majority below erred in dispensing with any requirement or finding de jure discrimination, improper emphasis on the history of the State of Texas



regarding racial discrimination as affecting the political processes of the State, and requiring the existence of a rational State policy regarding the use of multi-member districts.

Appellants also contend that the evidence presented in this case was not sufficient to overcome the presumption of constitutionality of the Texas House of Representatives apportionment plan to sustain a finding of unconstitutional gerrymander of District 17 pursuant to *Gomillion v. Lightfoot*, 364 U. S. 399 (1960).

Finally Appellants contend that the majority below ignored the precedent established by the Supreme Court in numerous cases regarding the propriety of imposing reapportionment plans denied by the Federal judiciary. As discussed by the Supreme Court in *Whitcomb* and by Judge Wood's dissent in this case the imposition of single member districts must in some way be viewed as an effective remedy for the wrong resulting from a multi-member district. The court below also ignored the precedent set by the United State Supreme Court set in *Reynolds v. Sims*, 377 U. S. 533 (1964) by failing to allow the legislature of the State of Texas a chance to comply with a court order to provide single member districts for those multi-member districts found unconstitutional. Such an opportunity to perform its true legislative function was allowed the legislature with regard to the court's finding of unconstitutionality of District 17, but the

same opportunity was not allowed with regard to the seven multi-member districts. Finally, Appellants contend that majority of the court below erred in summarily selecting plans for implementation as single member districts without offering a justification or standard guiding the court in a selection of the plans. In doing so the Court clearly ignored expressions of legislative intent and ignored previous Supreme Court decisions indicating that state policies and preferences with regard to reapportionment plans should be followed by a Federal District Court where possible. *White v. Weiser,* 412 U. S. 783 (1973); *Whitcomb v. Chavis,* supra.

## ARGUMENT

### I. WHETHER THE CONSTITUTIONAL STANDARDS FOR MULTIMEMBER DISTRICTS AS ESTABLISHED BY THE SUPREME COURT OF THE UNITED STATES WERE IMPROPERLY CONSTRUED AND APPLIED BY THE MAJORITY BELOW?

The majority of the court below has declared that seven of the nine multi-member election districts of the reapportionment plan for the Texas House of Representatives violate the Fourteenth Amendment to the United States Constitution. To reach this result, the court fashioned standards of constitutionality based on



criteria previously rejected by the Supreme Court as constitutionally relevant in this area and criteria relating to the evaluation and operation of the political process which at best can be said to be inherently speculative. These criteria were then applied in a manner not unlike a mathematical equation which could add up to unconstitutionality. The criteria itself became the standard of constitutionality, far beyond and in conflict with that ennunciated by the Supreme Court.

The majority below first established statewide conditions as a "continuing background" against which the multi-member districts were to be judged. These conditions included a majority vote requirement for party nomination, utilization of a place system designation without corresponding geographical residence of candidates, a historical pattern of racial discrimination in the State extending to the electoral system, and the generally one-party nature of the State. (6A) Acknowledging that these conditions alone could not demonstrate unconstitutionality of any multi-member district, the majority then set out four "factors" which if an aggregate could be found to exist in any district, the district would be unconstitutional. These factors are:

> (1) Restricted access of minority groups to the slating of candidates for particular party nominations;
> (2) The consistent use of racist campaign tactics to defeat minority candidates or those championing minority concerns;

(3) The indifference or hostility of the district-wide representatives or particularized minority interests; and
(4) The inability of minority groups to obtain representation in proportion to their percentage of the district population. (7A)

The remainder of this discussion will show how the majority below misconstrued previous standards established by the Supreme Court relative to multi-member districts in formulating its "factors", and misapplied its own "factors" to the evidence in the record. However, without commenting now on the validity of the "factors" it must be pointed out that the "factors" of the majority below cannot logically be utilized as independent conditions, a combination of which result in a constitutionally unacceptable election district. If minorities have restricted access to the slating process for candidates, it almost certainly will follow that those selected and elected will not be members of the minority and would not be sensitive to the needs of the minority. Therefore, a finding of the first factor presumably would have to result in a finding of the third and fourth factor. Secondly, a finding of consistent use of racist campaign tactics if successful will also result in the elections of persons not members of the minority and not sensitive to the needs of the minority. To base a finding of unconstitutionality of an "aggregate of factors" when those factors are inherently and intimately functions of each other and in no way



independent conditions, as the majority below has done, is logically and constitutionally unacceptable.

The history of constitutional challenges to multi-member districts can be traced primarily with four cases. Beginning in 1965 with *Fortson v. Dorsey,* supra, multi-member districts were held not to be per se unconstitutional under the Equal Protection Clause, although based on the entire record, a multi-member district could be found in violation of the Fourteenth Amendment. Adhering to *Fortson,* the Court rejected another challenge to a multi-member district the following year. In *Burns v. Richardson,* 384 U. S. 73 (1966), the Court clearly stated that the burden of proving a multi-member district unconstitutional was to be borne by the challenger and that evidence to sustain invidious discrimination must appear in the record. Although that burden was not met by the challenger in *Burns,* the Court indicated certain objective criteria which would have a tendency to nurture invidious discrimination. This criteria consisted of (1) a multi-member district electing a large number of legislators in relation to the total number of legislators; (2) a multi-member district which is not subdistricted to provide for geographical residence of legislators over the entire district; or (3) multi-member districts characterizing both houses of a bicameral legislator. *Burns v. Richardson,* supra, at page 88. While the objective criteria of *Burns* clearly could enhance invidious discrimination, the existence of one

or all of these conditions was never intended to determine constitutionality. Indeed, in the next case specifically attacking the constitutionality of a multi-member district, Justice Douglas' dissent pointed out that all of the *Burns* criteria existed in the Marion County multi-member district. *Whitcomb v. Chavis,* supra, at page 178. Yet the majority in that case specifically recognized that the existence of the circumstances of *Burns* could have a tendency to cause invidious discrimination, yet the *actual existence* of such discrimination must be shown by the challenger. *Whitcomb v. Chavis,* supra, at page 144.

In *Whitcomb,* Marion County, the largest county in Indian with a population of approximaely 700,000, had a multi-member legislative district which elected eight of 50 senators and 15 of 100 representatives. The Supreme Court refused to sustain the claim that this district was being used invidiously to cancel out or minimize the voting strength of racial groups. The Supreme Court reversed the holding of the lower court because that court had "misconceived the equal protection clause in applying it to invalidate" the district. *Whitcomb v. Chavis,* supra, at page 160. Further, after an exhaustive study of the record, the Supreme Court concluded that some of the findings of the lower court simply were not supported by the evidence. The Court did, however, establish the burden of a challenger of a multi-member district which if met would sustain a finding that the Equal Protection



Clause had been violated through dilution or cancellation of the voting strength of a minority. This burden is

> "to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question — that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." *Whitcomb v. Chavis,* supra, at pages 149-150.

To further assist litigants and judges, the Supreme Court discussed the type of evidence or "factors" which were or were not relevant to support findings of invidious discrimination through unequal access to political processes in a multi-member district. Here the court was not talking of those circumstances which have a tendency to cause discrimination, as involved in the *Burns* criteria, but rather the actual conditions resulting from a multi-member district which are constitutionally intolerable. Initially, the court said if a multi-member district was conceived or operated as a purposeful device to further racial discrimination, it could not stand. *Whitcomb v. Chavis,* supra, at page 150. (*Whitcomb* contained no evidence that the legislative districts were designed to dilute the vote of the minority.) Two condidtions were rejected by the Court as relevant. The fact that a minority group did not elect legislators in numbers proportionate to their population in the district does not prove invidious

discrimination unless the failure to elect minority legislators was a result of unequal access to the political process. *Whitcomb v. Chavis,* supra, at page 150. Second, lack of responsiveness to the wishes of the minority by the delegation elected from the multi-member district does not violate the Fourteenth Amendment. As pointed out by the Court, government by elected representatives inherently involves election by a majority vote based on a party or candidate platform which to some extent predetermines legislative votes on particular issues. This is not invidiously discriminatory. *Whitcomb v. Chavis,* supra, at page 156.

The Court in *Whitcomb* also identified the type of evidence which speaks to the question of access to the political process and is therefore relevant. As pointed out by Judge Wood in his dissent in this case, less opportunity to participate in the political process could be shown if:

> "the minority is not allowed (1) to register to vote; (2) to choose the political party they desire to support; (3) to participate in the affairs of the political party they desire to support; (4) to be equally represented on those occasions when legislative candidates are chosen by the party they choose to support; or (5) are regularly excluded from the slates of both major parties, thus denying them the chance of occupying legislative seats." (75A)



The fourth and most recent decision of the Supreme Court regarding the constitutionality of multi-member districts was in *White v. Regester,* supra. Here the Court indicated that an additional area of proper inquiry was the continuing effects of official past discrimination on a minority group's ability to participate in or have access to the political process. In *White,* the Supreme Court was of the opinion that the lower court had properly applied the *Whitcomb* standards and found that the multi-member districts in Dallas and Bexar counties operated to effectively exclude the minority within each district from participation in the political processes of these districts. Characterized as fundamental by the Supreme Court was a finding of tight control of the recruiting and slating process in Dallas by the Dallas Citizens for Responsible Government and elimination of the Blacks in the district from this process. As noted by the Supreme Court, as to Bexar County, the holding of the lower court was based on the totality of circumstances. Interestingly, an examination of the lower court's opinion [*Graves v. Barnes,* 343 F. Supp. 704 (W. D. Tex., 1972) ], is strikingly different than the one issued in the case at bar. In the prior opinion there was no attempt to utilize a checklist of "factors" — rather the overall picture was evaluated strictly in terms of access to the political process.

The legal reasoning of the majority of the court below measured against the standards of these four cases,

*Fortson, Burns, Whitcomb* and *White,* cannot be sustained. Two of the four factors of the majority, representation proportional to minority population within the district and indifference or hostility of representatives to minority interests, were specifically rejected by the Supreme Court in *Whitcomb*. While the Supreme Court in *White* noted without comment that the lower court had found insufficient response of the Bexar County legislative delegation to minority interests and that very few members of the minority had been elected from the district, such mentions in passing cannot fairly be taken as an expression that the lengthy discussion of the constitutional stature of these conditions in *Whitcomb* is overruled by the Supreme Court, making the conditions tests of constitutionality.

The consistent use of racist campaign tactics "factor" of the majority below also has never been sanctioned as an independent test of constitutionality. Again, the finding of the lower court in *White* that the same group which controlled the selection in slating process for legislative seats in Dallas County, the Dallas Citizens for Responsible Government, also engaged in the use of racist campaign tactics was merely noted by the Supreme Court in that case. The constituional significance of such evidence has never been elaborated by the Supreme Court. The status of this type of evidence with regard to multi-member districts is more properly analogous to that of the responsiveness of the elected delegation. In other words, the impact of racial



campaign tactics is more properly viewed by the success of the racial group in question at the polls rather than the impact on the access to the political process. In any event the finding of this "factor" in the instant case is tenuous at best as will be seen in the discussion of the specific districts which follows.

The majority of the court below also proclaimed that it was no longer necessary to establish that "minority voters are being legally disenfranchised." (6A) Yet, as pointed out in the dissent of Judge Wood who had been a part of the unanimous three judge lower court in *White,* the Supreme Court in *White* stressed the history of official racial discrimination in Texas, and that the Mexican-American in Bexar County was denied political access when "cultural incompatibility was conjoined with the poll tax and the most restrictive voter registration procedures in the nation to dilute the Chicano vote." (79A) The lower court two years ago properly recognized that findings of de jure discrimination were necessary as they specifically so found in Dallas and Bexar Counties, *Graves v. Barnes,* supra, at pages 725 and 728. Yet two years later the majority, as pointed out by Judge Wood, felt it could dispense such findings.

Much emphasis has been placed by the majority below and by the Appellees in this case on the history of racial discrimination in the State of Texas and by the State of Texas. Reams of evidence were introduced

regarding past instances of racial prejudice, segregation in education, housing, and public accommodations. It is undisputed that Texas at one time had all-white primaries, a poll tax, and restrictive voter registration procedures. Certainly some residual effect of these conditions remains in the habits, attitudes, and activity of minorities in this State and this is a valid inquiry as noted by the Supreme Court in *White*. However, judicial notice must be given to the fact that the all-white primary system has not operated since 1945, the poll tax was eliminated in 1966 and since 1971, Texas has had one of the most liberal voting registration procedures in the nation with permanent voter registration, accomplished through mail or under a liberal system of deputy voter registrars. If one were to consider the history of Texas in the past ten years relative to the political processes, it is obvious that the minorities of this State are active, do command a meaningful voice in the legislative halls, political parties, and are successful candidates, even in multi-member districts. Yet the majority below chooses to ignore this part of the history of Texas, and where it was impossible to overlook the successes of the minority and the concern of the majority for the minority, the circumstance was cited as being the unusual situation.

The majority below apparently was of the impression that one of the elements necessary to sustain the use of multi-member districts was the existence of a rational state policy regarding the use of multi-member



districts. (7A) Initially, one may question the necessity of establishing a rational state policy for utilization of single member districts. The Supreme Court has consistently declined to hold multi-member districts unconstitutional per se. The Court has also affirmatively stated that multi-member districts are not unconstitutional even when used in conjunction with single member districts. These undisputed holdings would seem to obviate any need for a state to justify its choice of combining both single member and multi-member districts in a reapportionment plan. Additionally, the majority below apparently chooses to ignore the strong tradition of multi-member districting, (SA 739) recognized by the Fifth Circuit in *Zimmer v. McKeithen*, 485 F. 2d 1297 (5th Cir. 1973), a case allegedly followed by the majority. To the extent that the majority based its holding of unconstitutionality of any multi-member district for the failure to justify state policy in this area, the majority erred both in the requirement of such justification and in its consideration of the record.

There are in evidence in this case two competing theories of how groups of people can best be presented. Under the one theory, it is better and more desirable for several legislators to represent an entire area, forming the basis for a cohesive representation of the mutual needs of an entire group of people, but at the same time having to have an allegiance to the needs and desires of the minority within that group. Under the other theory,

it is claimed to be more desirable that one Representative be elected from a specific geographical area, to represent, specifically and only, the interest of an identifiable minority group, while other Representatives are elected from other geographical areas within the county to represent what appear to be the interests of those specific geographical areas, without either representative having to be concerned with the needs of or the support of the minority groups in other parts of the county. Which of those choices is to be made seems principally an issue to be determined by the legislative branch of government, and not the judicial branch of government. In any event, the proof adduced in this trial indicates that whatever one's relative philosophical views might be, that insofar as constitutional questions are concerned, the multi-member scheme has not been shown to fail to represent the needs of the minorities or to exclude them from full participation in the elective process.

Attention is now turned to each of the specific districts found unconstitutional by the majority below. This discussion will show the error of the majority below in its characterization of the evidence before it, even as applying it to the majority's incorrect legal standard, and indicating some new "factors" such as a requirement of affirmative action by legislative delegations erroneously forming a basis for the holding of the majority below. More importantly, this discussion will show that the evidence cannot be said to



support a conclusion of unconstitutionality under the guidelines of the United States Supreme Court.

## A. DISTRICT 32, TARRANT COUNTY

As pointed out by the dissent, the political situation in Tarrant County bears a striking resemblance to the multi-member district in Marion County, sustained by this Court in *Whitcomb*. The two counties are of comparable population. The Tarrant County delegation, however, represents a much smaller portion of the membership of the Texas House of Representatives (6%) than the proportion of the Indiana House comprised to Marion County delegates (15%), a factor deemed relevant in *Whitcomb,* pp. 144, 145. Moreover, the Marion multi-member district operated for both House and Senate elections.

The similarities also extend to the processes of selection of candidates and political participation. As in Tarrant County, the Black minority in Marion County had few legislative victories than their proportion to the population. Nonetheless, they were not excluded from the political process and were found to be aligned with the Democratic Party, in which Blacks had some influence. In Tarrant County, wherein the Democratic nomination has traditionally been regarded as tantamount to victory, the Black and Mexican American have generally operated within a coalition of the Tarrant County Central Labor Council, the

Precinct Workers Council (a Black political organization), and PASO. These groups have enjoyed some success, and candidates in Tarrant County have been almost uniformly unsuccessful without the support of the labor-liberal-minority group or of the business community. (14A)

The majority, however, seeks to minimize the role of Blacks and Mexican-Americans in Tarrant County politics by asserting that the Labor Council has only supported Black candidates to attract votes for the remainder of the slate, that minorities really have no influence with the Labor Council, and that even with labor's support, the minority candidates are unsuccessful. However, for whatever reason, the Labor Council has supported minority candidats in 1968 and 1972. The record indicates that the Council and the other political organizations jointly screened Party nominees, and counsel for Appellees repeatedly referred to the groups as a "coalition". (SA 140 and SA 167) Most importantly, however, the minority candidates have made strong showings. Mr. Bobby Webber, a Black, was supported by the coalition and received 48% of the vote in the 1972 Democratic Primary. This year Webber received 43% of the vote against Mr. Hilliard, a strong incumbent. (See Exhibit B to this Brief) Incument Texas legislators were unusually invulnerable in the 1974 primaries, and Webber's race was one of the strongest challenges in the State to an incumbent. Moreover, in a county with only



12% Black population, mathematics alone demonstrate that Webber has enjoyed substantial support among Tarrant County's white voters.

*Whitcomb,* supra, at page 152, also recognized that the Democratic Party in Marion County had apparently fielded candidates "satisfactory to the ghetto." Here the minority organizations have worked together with the Labor Council in selecting candidates of all races and ethnic groups who have been successful in garnering the support of Black and Mexican American votes.

Unlike the situation in Dallas County where this Court in *White* found that the DCRG endorsement was usually essential for victory, no one group holds the key to success in Tarrant County, as was conceded by Plaintiff's Witness, J. W. Sifford, a Tarrant County labor leader (SA 1117). Appellees however, attempted to attribute DCRG-like qualities to a "Seventh Street Group". While the majority found powerful interests "slating" candidates without consulting minority representatives, (18A) there was no proof of formal slating or endorsement procedures or "slate cards". No witness could identify a single member of this mysterious group. Tarrant County Representative Gib Lewis termed the group "mythical". (SA 183, 90A)

The majority also found a "clear pattern of unresponsiveness" to the needs of minorities by the legislative delegation. (18A) In support of this finding

the majority establishes a requirement of "affirmative initiation" of legislation in addition to votes on particular bills as the criteria. (15A) While stating that the delegation displayed indifference in areas characterized as by the majority as having particular interest to minorities, (15A) they cite no instance where a member of the delegation expressed such indifference or any instance where a member refused to act in one of these areas when requested. The failure to do so stems from the fact that the record contains no such evidence. On the other hand as shown by dissent:

> "... it should be pointed out that most of the Tarrant County delegation voted for an 'open meeting' bill, bilingual education, posting of prices for prescription drugs (introduced by Mr. Leland, a Black representative), licensing requirements for child care centers, and a crime and narcotics educational program. (See Lewis deposition, pages 192-199). Obviously these legislative enactments have appeal to minority interests as well as to Tarrant County as a whole. There was no evidence analyzing the entire history of the last legislative session, but a cursory glance does not indicate of which they are accused in the majority opinion. The racial connotation in the statement that one legislator voted against the creation of a State holiday honoring Dr. Martin Luther King pales the fact that he favored instead a holiday in memory of Lyndon Baines Johnson, President of the United States from Texas." (91A)

The record clearly demonstrates access to the political process and intense activity in legislative



politics by minorities in Tarrant County. While the Equal Protection Clause does not guarantee consistent success at the polls, Blacks and Mexican Americans have a significant voice in a viable political coalition in Tarrant County. Moreover, in this district of 82% white population, recent elections refute any conclusion of total minority impotence.

## B. DISTRICT 7, JEFFERSON COUNTY

This district contains approximately 221,000 people, elects three members of the House of Representatives, and has a Black population of approximately 30%.

Appellees' expert witness, Dr. Charles Cotrell, testifies "[i]n Jefferson County I would say unequivocally that as long as a multi-member district is maintained no Black person stands any kind of a chance of being elected." (SA 634) Nevertheless, in the Democratic Primary Run-Off, June 1, 1974, Al Price, a Black, received 48% of the vote in his race for State representative. (Exhibit B to this brief) In the Primary Price had led with 39% to 31% for the eventual victor. (Exhibit A to this brief)

The most important endorsing group in District 7 is the Committee on Political Education (COPE) of the Sabine Area Labor Council. While the majority characterizes the endorsement by this group as "tantamount to election" (21A) two of the present three

members of the delegation were elected without that endorsement (95A) No "extra-ordinary personality conflicts" cited or found in the record divided the labor vote in those races.

Price received the labor endorsement in 1974. He was a candidate in 1964 and 1972 as well. In the latter year COPE listed three candidates for one race acceptable, one of them being Mr. Price, (95A); the majority asserts that no Black man (at the time of the trial) has "ever appeared on the COPE slate." (22A) Although coming in third in his 1972 race, this was only approximately 2,400 votes behind the leader out of over 20,000 votes cast. (94A) Additionally, the majority also apparently felt that the fact that Blacks have been elected on a district-wide basis to the city council and school board posts (94A) is of no moment in gauging access to political activity and success at the polls, although this is used in other districts.

The majority, while relying heavily on past problems of discrimination in labor unions, schools and some other areas, as a basis for its findings, ignores entirely the admission by Appellee's attorney that none of these conditions would have been changed by single member districts in Jefferson County (95A). Moreover, the existence of this continually high degree of racial discrimination and tension urged by the majority cannot be shown as transferred to the electoral arena in light of the election of Blacks to the school boards and



city councils in both Beaumont and Port Arthur and the impressive showing this year by Price. Any racial tension which may exist in Jefferson County overlaid on the system of multi-member districts has not been shown to make such districts a vehicle for denying access to the political process.

The majority finds the legislative delegation insensitive and unresponsive to the particularized needs of minorities. The only basis for this finding appears to be the lack of social contact with Blacks and one member's unawareness of the degree of segregation in the Beaumont public schools. (23A) The record, however, reflects appearances and requests to appear at the functions of the Black community by members of the delegation. It is also pertinent that the member unaware of the degree of Beaumont's school problems is a resident of Port Arthur, the other city included in District 7. (SA 1783)

The record with respect to Jefferson County reflects substantial and viable political activity among Blacks, a paucity of evidence of "unresponsiveness" of the legislative delegation, and no showing whatsoever that Jefferson County's "legacy" of racial discrimination would in any way be affected by the establishment of single member districts.

## C. DISTRICT 35, MCLENNAN COUNTY

District 35 is coterminus with McLennan County, and includes the City of Waco as well as some rural areas. This district's population is 147,533, and two members represent it in the House of Representatives. Sixteen percent of the county's population are Blacks, and 7% are Mexican Americans. Approximately two-thirds of the county's population resides in Waco.

Waco was damned for the variety of unhappy racial incidents in the 1950's. No showing was made, however, that splitting this double-member district into halves will have any effect on any racial tensions remaining in McLennan County in 1974.

Appellees concede that the voting record of Tom Moore, one of McLennan County's representatives who left office in 1973, was "excellent". Moore, identified as a liberal (99A), and Lane Denton, who was Moore's colleague in the House from the district and is still serving, were members of the "Dirty 30", lauded by Appellees' expert witness, Dr. Cotrell, as a group having opposed the Sharpstown Banking Scandal. (SA 667) While meeting the requirements or responsiveness, a new test or "factor" created by the majority—that of affirmative action. Nevertheless, Moore and Denton flunked even though it was conceded that "there is no evidence that past McLennan County delegations have often voted contrary to the wishes of minority citizens. . . ." (27A)



While no Black or Mexican American has been elected to the House of Representatives from McLennan County, two Blacks have been elected to the Waco City Council. The Black successes in city elections, however, were discounted by the majority:

> "Black councilmen, however, apparently have not acted as effective spokesmen for Black and minority interests. One of them was elected in a race against another Black, and lost by a margin of three to one in Black polling places but won heavily in white areas. Thus, he was elected by whites and owed a political debt to them, rather than to the Black people." (27A)

Consequently, that Black victory is written off by the majority because the candidate received white votes and lost minority votes. However, in numerous other instances, Appellees have relied heavily on the fact that whites generally oppose minority candidates while minority voters generally support them (and likewise that whites tend to vote for whites while minorities vote against whites when a minority candidate is available) to show that "polarization" exists. (SA 603, 612, 614, 631, 665) Appellees introduced extensive evidence to this effect with respect to El Paso, Nueces and Lubbock Counties. The majority asserts that single member districts are needed in Lubbock County because a substantial portion of the white population will automatically oppose a Mexican American. (37A) Hence, when minority candidates rely too heavily on white votes, it is assumed that they will not properly represent minorities, (27A) and when they receive solid

white opposition, it is concluded that the county is polarized, hostile, racist, and ripe for single member districting.

There are two ways out of this dilemma posed by the majority. If a minority candidate receives no substantial support from either the whites or minority groups, then the community is not polarized, and he has not sold out his people. Of course, in that case he would lose the election. The other possibility would be to receive substantial support from all races and ethnic groups. That was essentially the situation with respect to Berl Handcox, a Black Austin City Councilman. In his 1971 race, he won large majorites from the Black voters, received endorsements from liberal organizations (see, e.g., SA 713 concerning endorsement of West Austin Democrats), and received some business support. (See SA 267, 268) The majority, however, was not satisfied with the performance of Handcox, either. His election was said to be due mostly "to the largesse of the Anglo community" and is to be "explained by the fact that the Black candidate ran as a part of a group endorsed by the dominant business community." (31A) In a community with over 60% Anglo population, it was not explained how a Black was to be elected without at least some "largesse" from the Anglos.

The minority Black population in McLennan County has been active in the political processes of that county,



especially with regard to the Democratic Party. Blacks have served as delegates to the county conventions, have been elected as delegates to the State conventions, and their support and opinions were solicited by those involved with the Democratic Party County Convention and State Convention procedures. The record reflects substantial activity among minority political activists in McLennan County with some degree of success.

D. DISTRICT 37, TRAVIS COUNTY

Appellants have noted numerous instances of fact-findings by the majority that are contradicted by the record and this contortion of the record is continued with respect to Travis County. This county has approximately 300,000 people, elects four members to the Texas House of Representatives, and has a minority population of approximately 20% Mexican-American and 12% Black. More than two-thirds of the county's population is located in the City of Austin.

Travis County legislative electioneering is not controlled by one or two formal slate-making groups. Yet to support the finding of the unequal access "factors" the majority concluded that

> "The Democratic Party is the one continuing and significant political force in the county, and a coalition of Austin businessmen and state capitol lobbyists have generally controlled the local party mechanism. The Black and Mexican American

minorities are not represented in this dominant group." (29A)

The majority apparently gleaned this information from the testimony of Appellees witness, Stuart Long, whose testimony clearly reveals that while state capitol lobbyists were at one time a dominant force in the Travis County Democratic Party, they are not now.

On direct examination Long was asked:

> "Q. In terms of legislative politics as distinguished from other kinds of politics, has there been a group where formal or informal that has dominated Travis County Legislative politics *during the 50's and 60's?* (Emphasis added)
>
> "A. Yes, It is, as far as I know, an informal sort of thing. The business lobby is a very big part of it since most of them live here." (S. A. 270, 271)

During cross examination the subject of the time of the domination of this group was again discussed with Long:

> "Q. Now this group that you say dominates Travis County politics, that's history, isn't it, Mr. Long? They don't dominate it anymore, do they?
>
> "A. No. As I say there has been a change in the last election. I would say, the last two or three elections." (S. A. 27A)

There was no testimony from any witness that this group dominates Travis County today. Indeed, the



interests, strengths and participation of minorities in the Democratic party is reflected in the record and by the dissent. (101A-102A) Included in the Appendix to this brief are records from the highest policy-making body of the Travis County Democratic Party, the Travis County Democratic Convention. In 1972 and 1974 Travis County Democratic Party Convention went on record in support of a number of proposals favored by minority groups and not generally supported by the "business lobby," including resolutions relating to prison reform, uniform school financing, the Equal Rights Amendment, limitations on preservation of criminal records, oil price rollback, providing for Spanish-speaking persons at polling stations, improvement of conditions at a high school located in the minority community, requesting the legislature to hire minority law enforcement people in proportion to their share of the population, deploring minority hiring practices by the Department of Public Safety and the Texas Rangers, deploring exploitation of Africa by foreign interests, and favoring single member districts (See Exhibits C and D to this Brief).

Concerning minority legislative races, the majority found

> ". . . only two Mexican Americans have garnered sufficient financial and other support to attempt the race. Both of these efforts at minority participation in the elective process met with defeat despite overwhelming support from black and brown voters following campaigns marked by appeals to the racial fears and hostilities of the sizable white majority." (30A)

The testimony indicates, however, that only one of the two Mexican American candidates was the victim of racist campaign tactics: His race will be further discussed below. The other was defeated by Mr. Larry Bales, one of Appellees' witnesses. There was no evidence showing any racist tactics used by Bales. Bales, however, testified that his other opponent (the incumbent) had attacked him for defending a Black Panther in law suit. (S A 256) The effectiveness of that appeal is of obvious doubt, however, because Bales handily defeated the incumbent legislator.

Moreover, the majority ignored evidence that the racist tactics allegedly used in the other race (against Mr. Gonzalo Barrientos) may also have been ineffective. Barrientos, admittedly a relatively unknown figure in the county, received approximately 49 ½% of the vote in that race against a fourteen-year Anglo incumbent. (S A 406) The majority also overlooked a city-wide victory by a Mexican American who defeated an incumbent Anglo school board member in Austin in 1972. (S A 275)

While the majority's conclusions concerning minority participation in Travis County at the time of trial are highly inaccurate, the results of the 1974 Democratic Primary further refute their assertion that minorities are not represented in the dominant elements of Travis County politics. Gonzalo Barrientos defeated the now sixteen-year incumbent who had narrowly defeated him in 1972, and Wilhelmina Delco, a Black, won the



Democratic nomination, which in Travis, like the other counties, is normally tantamount to election (29A) to a legislative seat. (Exhibits A and B to this Brief) Thus, half of the Democratic nominees for Travis County's legislative seats are now minority candidates and the district itself has only 32% minority population. It is difficult to see how the multimember districts operated unconstitutionally to deny equal access to the political process in Travis County.

Mrs. Delco had previously won a seat on the Austin school board (elected city-wide on the place system) in 1968 which was explained by the majority as having been attributable to the fact that the election occurred the day after the Martin Luther King assassination, thus representing what they felt to be "a distortion of ordinary voting patterns." (31A) Whether or not that victory was a distortion, in her 1974 legislative race, Mrs. Delco defeated three Anglo male candidates without a run-off, garnering 54% of the vote. (Exhibit A to this Brief) Another Black Candidate, Berl Handcox, who has twice been successful in city-wide, place system elections (both to the Austin City Council, 1971 and 1973), has been discussed under McLennan County above, along with the majority's rationalization of his success.

Not surprisingly, the majority found that the Travis county delegation

> "while not uniformly hostile to the particularized needs of minority residents, have evidenced an

indifference to the serious problems confronting this constituency." (31A)

The only example cited was the delegation's lack of concern for minority employment in state government. However, the condemnation of state government minority hiring practices by the Travis County Democratic Party, reflects a true concern in this area by the group found by the majority to be "the one continuing and significant political force in the county".

The findings of fact with respect to Travis County bear no resemblance to the political situation in that county or to the record proceded at trial. The record indicates that minority political activity is quite pervasive in Travis County, and their numerous recent successes, including two victories over incumbent Anglos, refutes any contention that they have no access to the political process.

E. DISTRICT 75, LUBBOCK COUNTY

This district has a population of approximately 147,722 people, elects two representatives, and has approximately 7.4% Black population with 17.33% Mexican American. Most of the population of the district is in the City of Lubbock.

The majority's lengthy discussion of past and recent evidence of discrimination in this district is relevant



only to the extent that it demonstrates lack of access by minorities to the political process. Clearly, Appellees' burden in this case is to show more than incidence of discrimination or racism in Lubbock's past or that the school system of the district has been segregated. As recognized by Judge Wood, "little if any, evidence is shown in the record, and none is referred to by the majority, which indicates that the minority in District 75 has been prevented effective access to the political process." (104A)

Appellees concede that there is no slating of candidates for party nomination in Lubbock County. In the alternative they attempt to paint a general picture of indifference and despair on the part of minority residents in the district. However to establish a violation of the Equal Protection Clause through the use of a multi-member district, this condition must be related to the access of the minority to the political process. Appellees have attempted to show this through the infrequency of minority candidate success in election to public office in Lubbock. Appellants have already discussed the validity of this "factor" as a constitutional test for access to the political processes set out under *Whitcomb* and *White*. Still, even under the majority's test, the situation in Lubbock County does not mandate a finding of unconstitutionality. While minority groups have not run for legislative office in District 75 (although one Mexican American filed and later withdrew before the primary election in 1974, Exhibit A to this brief), they have run and won in other

district-wide races. A Black currently serves on the Lubbock County School Board. A Mexican American, Froy Salinas, came within 250 votes of winning his race for the School Board in Lubbock in 1972. (104A-105A) Evaluation of the success of minorities in Lubbock County cannot be done without consideration that the minorities constitute a total of only 24.7% of the population. With regard to legislative races, it is not explained how the splitting of this two-member district will remedy any feeling of indifference or despair by the minority or increase their success at the polls. Even if all the Blacks and Mexican Americans residing in the two member district were included in a single member district in Lubbock County, they would still constitute a minority of the population.

The Appellees have attempted to show the existence of racial bias in Lubbock County. But the existence of racial bias does not meet even the majority's "factor" of consistent use of racial campaign tactics. Further, the majority's "factor" of responsiveness by the elected delegation to the needs of the minorities was not demonstrated. The majority did not discuss the performance of Lubbock's House members in connection with the "affirmative action" or any other standard. The dissent, however, stated:

> "The evidence shows further that the voting records of delegates from District 75 support a finding that these delegates have generally voted for issues presented to the them along the same line as Mexican American and Black legislators." (105A)



The majority has again ignored its own standards for determining constutitonality and has relied exclusively on a discussion of cultural and historical circumstances. The reliance of the majority on an infrequency of success at the ballot box by minority candidates without a showing of restricted access to the slating procedures and other political processes of the county cannot support a finding of unconstitutional operation of the multi-member District 75.

F. DISTRICT 72, EL PASO COUNTY

This District has a population of approximately 297,000 people, elects four representatives to the House of Representatives and has a minority population of 2.8% Black and 56.8% Mexican American of whom approximately only 52% are American citizens eligible to register to vote.

In an attempt to support its holding of unconstitutionality in this multi-member district, the majority has engaged in an incredibly selective view of the record to find its "factors". Appellees conceded that no slating system exists in El Paso County for party nominations in legislative races. Therefore, the majority points to the use of the slating system in city council elections. In doing so, they are compelled to admit that Mexican Americans are and have been part of this non-partisan slate making process with several Mexican Americans having been successful candidates on this slate. The majority apparently considers these

activities of little moment since the coalition is "an informal group of businessmen". (42A) No contention was made that Mexican Americans elected to the city council were not supported by Mexican American voters or that they were hostile to minority interests. The existence of this slate-making group in city elections which includes bona fide minority participation can hardly qualify as evidence of lack of minority access to the political process.

The consistent use of racist campaign tactics was supported, the majority felt, by reference to a so-called "whisper campaign", the extent or contents of which were never determined. The majority refers to one statement made by a state's witness (the only Mexican American testifying with respect to El Paso) regarding a racially based campaign for mayor. (41A, 42A) The majority ignored parts of the testimony of Appellees witnesses, the Chairman of the Democratic and Republican Parties in El Paso County, although it did not escape Judge Wood. They testified that no overt racial campaign was used in El Paso. (107A-108A) Moreover, as in Travis County, the majority indulges in the *non-sequitur* that the existence of racist appeals automatically means the minority candidates are thereby damaged. Given the extensive success of Mexican American candidates in El Paso, as discussed below, the viability of such tactics might well be doubted.



To support its third "factor", insensitivity of the legislative delegation, the majority points to the opposition of a former state senator to the repeal of the poll tax. The majority made no mention of the performance of any El Paso legislator who has served within the last nine years. Also ignored was this same senator's sponsorship of an early bi-lingual education bill,(S.A. 446) evidencing affirmative action (a "factor" created for other counties) in an area agreed by all to be of significance to Mexican Americans. The only remaining evidence in the record bearing on this issue was Defendant's Exhibits 13 through 32, voting records on selected legislation considered by the most recent regular session of the Texas Legislature. These exhibits show that the El Paso delegation was generally aligned in their voting with the Black and Mexican American members of the Texas House of Representatives. (R. No. 147)

Regarding the final "factor", proportional representation of minorities, the majority notes that "of the 50 different legislators elected in El Paso County since 1886, only four have been Mexican American." (41A) Statments of this sort are misleading. It might also be said that of the eleven legislators either elected in 1970 and 1972 or receiving the democratic nomination (again, tantamount to election) in 1974, five are Mexican American. (One Mexican American who was elected once to the House and once to the Senate is counted twice in that statement.) The majority also refers to "lingering intimidation of

Mexican Americans since the repeal of the poll tax and restrictive voter registration measures". (41A) But their only example is an incident which occurred in the late 1960's which was prior to the repeal of the restrictive registration measures, that event having occurred in 1971. Regarding the quantity of Mexican Americans elected to the legislature from El Paso from Reconstruction until fairly recent times, no one doubts that the poll tax, annual voter registration, high filing fees, and the pre-1965 under-representation of urban areas had a combined effect of effective disenfranchisement of minority groups as well as others. That however is not this lawsuit. Minority political participation in El Paso in recent years presents a much different picture.

El Paso elected its first Mexican American mayor in 1960. (111A) In 1970 three Mexican Americans were elected to the legislature from El Paso County. Two of them ran against three Anglos for the Senate in 1972. The Mexican Americans finished first and second in the Senate race. (111A) The loser in the run-off made a comeback, winning renomination to a House seat, defeating his Anglo opponent with 56% of the vote, in the 1974 Democratic Primary. (Exhibit A to this Brief) Two of the four current county commissioners are Mexican American, having held their posts for 12 years. (111A) Two members of the El Paso City Council are Mexican American as are two district judges, three justices of the peace, three constables, one domestic relations court judge, one county court at law judge and one municipal judge.



The majority points out that none of the Mexican Americans elected to the Texas House of Representatives live in what they term the "barrio" section. (42A) It should be noted that nearly 70,000 other El Paso Mexican Americans live outside what the majority has determined to be the "barrio". The information regarding this "barrio" was succinctly discussed by Judge Wood:

> "The testimony by an expert witness and others as regards the disadvantaged south side of El Paso is hardly the fact filled type of evidence originally presented to this court on Bexar County which was replete with civil rights studies and reports on specific income tabulations, living conditions, education achievements ad finitum to provide a complete picture of the Barrio area. Simply to say that there is a concentration of Chicanos in one area of the city, combined with unsubstantiated and subjective statements that they are disadvantaged should not be the source of compelling proof for this Court to draw the parallel to the San Antonio Barrio." (110A-111A)

Finally, the majority injects a new factor to support its holding — that of the cost of running for election district-wide, as contrasted with single-member districts. Citing the non-use of television by candidates for county commissioners races, the court concludes that this "has probably contributed", to the fact that Mexican-Americans have been elected on four occasions to the State legislature but 17 times to the Commissioners' Court. (43A) Even if this was an appropriate consideration, the totally speculative nature of the majority's finding is clearly

inappropriate as a basis for determining significant constitutional issues. The record itself reflected the unreliability of campaign costs in this area.

> "The plaintiffs also presented the elected Chairmen of the Democratic and Republican Parties to substantiate Dr. Cotrell's ultimate findings. Both witnesses testified that campaign expenditures for a State legislative seat amount to $15,000-$20,000 in the present multimember district. Although no witness testified that minority candidates had been unable to raise such amounts, the political Chairmen opined that single member districts would lower campaign costs and encourage more Mexican-American candidates.[4]"
>
> ". . . [4] In District 72 (El Paso) the four successful Candidates spend amounts ranging from $17,000 to $3,000, indicating that Campaign costs vary so much even within a given multimember district as to be an unreliable barometer of constitutionality." (107A)

The full record in this case simply cannot be contorted to make valid findings of even the majority's "factors". Appellants can summarized this evidence no better than Judge Wood:

> "It is inconceivable how the majority in this Court can successfully ignore or circumnavigate the cold, hard, undisputed statistical evidence so overwhelming in El Paso County to arrive at the conclusion requiring single member districts." (112A)

## G. DISTRICT 48, NUECES COUNTY

This district has approximately 220,056 people, most of whom live in Corpus Christi, elects three members of the Texas House of Representatives, and has minority populations of 43% Mexican American and 5% Black.



This district, like El Paso, is one with a high percentage of minority population and an impressive record of minority participation and success in the political arena. In the past decade, except for one term, the Nueces County House delegation has included at least one Mexican-American. (115A) Mexican Americans also hold three of the six Corpus Christi City Council seats (elected at-large), while one other seat is held by a Black, (117A), both county courts at law district clerk (the Mexican American here having defeated an Anglo incumbent), three justices of the peace, one constable, and one county commissioner. (117A) These electoral successes in non-legislative races apparently were considered irrelevant by the majority, as the only mention of such races was in reference to an allegedly racist appeal made in the 1971 city council election. Regardless of the validity of this "factor" the citation to one election in 1971 would not support a finding of consistent use of racist campaign tactics. The 1971 incident was based on controversy over forced school busing which as Judge Wood points out is an issue generally unpopular with many segments of our society, minority and Anglo alike, (50A, 115A-116A)

The majority discounts the presence of the minority legislator in the current delegation, Carlos Truan, a Mexican American, agreed by all to be an effective spokesman for minority interests, on the basis that Truan believes that he could spend even more of his time on minority needs if he represented a

single-member district. (51A) The other side of that coin is, of course, that legislators who represent the Anglo majority will be able to spend little if any of their efforts working toward solution of problems concerning minority groups. In this connection DeWitt Hale, an Anglo Nueces County House member, testified that he had engaged in a great deal of work toward alleviating minority problems, including measures relating to preschool instruction in English for non-English speaking students, attempts to provide for financing of public schools in line with the district court opinion in *San Antonio Independent School District v. Rodriguez,* 411 U. S. 1 (1973), co-sponsorship of the bill to repeal the poll tax (the primary sponsor of which was also from Nueces County), a bill providing for the licensing of proprietary schools, and a rider on the Appropriations Bill to prohibit discriminatory employment in this State. (S.A. 722-726) Hale also testified that in his opposed races he had always received a larger percentage of the Mexican-American vote than of the Anglo vote. (118A) He indicated that he would be able to spend less of his time on minority issues if he represented a predominantly Anglo district. (S. A. 738) As Judge Wood pointed out,

> "Representative Hale has been such a paragon of the pioneering progressives in advancing legislation vital to the particularized needs of his long-time Mexican American constituency that the League of United Latin American Citizens (LULAC) made him an honorary member for his efforts." (118A)



Despite the records of Representative Hale and Truan, the majority found the Nueces County delegation not adequately responsive to minority needs. The finding of this "factor" apparently is based on Representative Truan's feeling that he could spend more time on minority matters in a single member district and his testimony to the effect that non-minority legislators are inherently less capable of working for minority goals than are minority legislators. (51A) The validity of this latter conclusion is brought into question, as Judge Wood points out, since Appellees' expert witness, Dr. Cotrell felt that in Galveston County, single member districts were not needed because the Blacks had been adequately represented by the Anglo legislators. Moreover, this Court has never recognized any legal conclusion that non-minority legislators are inherently less capable of adequately serving minority interests. The evidence in this case clearly shows that at least two long time members of the Nueces County delegation have been thoroughly responsive to minority needs. In attempting to justify a finding of its "factors" relating to consistent use of racist campaign tactics or restricted access to the political process, the majority points to supposedly Anglo voter hostility toward Representative Truan's work for minorities. Regarding Representative Truan's election, the majority concluded:

> "Finally, the evidence disclosed that Representative Truan lost much of his support in the election of 1972 because of Anglo resentment stemming from his legislative proposals relating to the interests of Mexican Americans." (52A)

First, Appellants know of no constitutional principle dictating that when an incumbent minority legislator works effectively for minority interests and subsequently overcomes political opposition aroused over his work, winning by a smaller margin than in past years, that lack of minority access to the political process is thereby demonstrated. Moreover, the record does not support racial hostility as the basis for Truan's decline in votes. Truan's original home county, Kleberg County, where he has received overwhelming majorities, had been taken out of his district between 1968 and 1972. Truan also had a public "falling out" with the Bishop of Corpus Christi in 1972. (118A-119A)

The record shows no legitimate basis for finding the multi-member district in Nueces County to be unconstitutional under the majority's "factors" or any other constitutional standard.

II. WHETHER THE EVIDENCE PRESENTED IN THIS PROCEEDING IS INSUFFICIENT TO OVERCOME THE PRESUMPTION OF CONSTITUTIONALITY OF THE TEXAS HOUSE OF REPRESENTATIVES APPORTIONMENT PLAN AND FIND AN UNCONSTITUTIONAL GERRYMANDER OF DISTRICT 17?

Appellees concede that in District 19, comprising most of Galveston County, the multi-member district has not operated to deny minorities effective access to



the political process. However, Appellees maintain and the majority found that District 19 was unconstitutionally gerrymandered to minimize Black voting strength in Galveston County. See *Gomillion v. Lightfoot,* 364 U. S. 399 (1960).

The 1970 census revealed that Galveston County had approximately 20,000 population in excess of the amount needed for an ideal two-member district. Accordingly, it then became necessary to remove 20,000 people from the Galveston County multi-member district. District 19 contains approximately 20% Black population. Galveston County contains approximately 21% Black population. Appellees' case for gerrymandering in this instance is based on the theory that the Legislative Redistricting Board, in excising the 20,000 population, removed a disproportionately large percentage of Blacks. Among the 20,000 removed was Census Tract 1219, containing approximately 5,500 Blacks. The undisputed evidence shows that this allegation of gerrymandering rests soley on the fact that approximately 27.5% of the 20,000 people removed were Blacks, a figure less than seven percentage points greater than the Black percentage of the county as a whole. This Court has never sustained an attack of gerrymandering on so frail a basis.

The majority noted that the only witness testifying on this issue, Representative Ed Harris of Galveston, had proposed a plan to the Legislative Redistricting Board wherein the 20,000 population excission would

include Blacks "reflecting the ethnic composition of the county as a whole," (55A), which would presumably mean something in the neighborhood of 21%. Thus, Representative Harris' complaint is not that the Board should have removed no Blacks at all, but rather that they should have removed only about 4,200 instead of about 5,500. Appellants submit that this difference is simply not one of constitutional magnitude.

The only evidence regarding the intent of the Board in choosing the particular 20,000 people was the uncorroborated testimony of Mr. Harris. Even the majority felt "some reservations about accepting the opinion of one expert as a basis for its findings."(55A) Even stronger reservations were held by Judge Wood:

> "The bare opinion of Representative Harris in light of the extreme geographical obstacles of nature faced by the Board in its efforts belies the efficacy of a rush to judgment. Much more must be shown by plaintiffs to support their challenge to the good faith efforts of the Legislative Redistricting Board. The dearth of evidence presented does not overcome the presumption of the constitutionality of the Board's action and compel change." (122A)

The variation from the Black percentage of the county by only a few percentage points coupled with the meager evidence of intent on the part of the Legislative Redistricting Board is not adequate to constitute a finding of intentional racial gerrymandering under *Gomillion v. Lightfoot*. supra.



## III. WHETHER THE MAJORITY IMPROPERLY PREEMPTED THE LEGISLATIVE FUNCTION OF REAPPORTIONMENT AND IMPROPERLY IMPOSED REMEDIAL PLANS SUMMARILY CHOSEN FROM A NUMBER OF ALTERNATIVES OFFERED WITHOUT ANY FINDINGS AS TO THE STANDARDS OR REASONS FOR THE CHOICE?

Without conceding the error of the lower court's holdings, the Court below incorrectly ordered the implementation of specific single member district plans because (1) it was not at all clear that single member districts would be an effective remedy; (2) because the Texas legislature should have been given the opportunity to correct a newly found unconstitutional situation; and (3) because the Court was given a number of proposed plans by both sides and other interested persons and selected a set of plans for reasons unknown and unstated.

The Federal Courts have traditionally, and correctly, been quite reluctant to enter into the political questions of redistricting, and have done so only when no other rational course seemed available. When considering challenges to a multi-member district system, the Supreme Court has announced that single member districts are preferable to large multi-member districts. *Conner v. Johnson*, 402 U.S. 690 (1971). This preference, however, must be seen as an effective remedy to alleviate the unconstitutional situation

found in a multi-member district. As stated by Mr. Justice White in *Whitcomb, supra,* at page *160:*

> "The Court entered judgment without expressly putting aside on supportable grounds the alternative of creating single member districts in the ghetto and leaving the district otherwise intact, as well as the possibility that the Fourteenth Amendment could be satisfied by the simple requirement that some of the at-large candidates each year must reside in the ghetto."

And as subsequently followed by Judge Wood:

> "Not only must there be an equitable remedy at law, but the Supreme Court has gone one step further in *Whitcomb,* supra, by requiring the Court to explore in fashion where possible a less burdensome plan than ordering an entire single member district reapportionment." (76A)

Drawing the legislative district lines could hardly be thought to end racial prejudice. Indeed it was never suggested in the record of this case that racial prejudice would be eliminated by the adoption of single member districts, and in fact, in one district where the issue was raised, plaintiffs' counsel conceded that the adoption of a single member district would not result in the elimination of the offending racial prejudices. In light of the political activity within the districts especially in the last decade, the practical effect of a single member district in any of the present multi-member districts is highly speculative.



The reluctance of Federal Courts to enter the redistricting thicket is also based on the acknowledgment that reapportionment is a legislative function. The Supreme Court has emphasized the need for judicial restraint in the imposition of reapportionment plans:

> "That legislative reapportionment is primarily a matter for legislative consideration and determination and that judicial relief becomes appropriate only when a legislature fails to apportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *Reynolds v. Sims,* 377 U.S. 533, at 586.

The action of the majority below in ordering the immediate implementation of plans chosen by it is a departure from this same Court's prior actions. Indeed, in 1972, this same panel found the entire redistricting plan for the Texas House of Representatives to be unconstitutional, but suggested that it would allow the legislature to remedy that fact itself, and allowed the 1972 elections to proceed under the legislative plan. The majority in this case has allowed the Texas Legislature to cure the unconstitutional situation it found in District 17. There is no claim that the Texas Legislature has acted in bad faith in not redistricting the seven multi-member districts that are now in controversy, since indeed until the summer of 1973, after the Texas Legislature was out of session, no multi-member district had been declared unconstitutional by the United States Supreme Court.

The record was replete with evidence that the Texas Legislature would most likely have passed single member districts for some of those districts in question but for procedural problems. (128A, SA 200-201, 253, 845, 916, 918)

The action of the majority of the lower court should not be allowed to stand for a third, and perhaps more compelling reason. Pursuant to the pretrial order of the Court, non-parties to the litigation were allowed to submit sealed single member district plans to the Court in the event the Court found any or all of the districts unconstitutional. (R. No. 104). Further, after announcing its holdings as to the constitutionality of the districts, the Court convened on January 28, 1974 to receive testimony and plans from the parties. All of the various plaintiffs offered plans as did the defendants. As pointed out by Judge Wood, the plans for five of the districts offered by defendants were approved and advocated by a majority, if not all, members of the respective delegations. (129A). After approximately five hours of testimony, the Court took a five-minute recess and on returning to the Bench uniformly adopted plans offered by plaintiffs (excluding those offered by plaintiffs representing the Republican Party). (SA 1005-1007) Neither in open court nor in their written opinion did the Court justify their choice.

The action of the majority below is in clear opposition to the statements of the Supreme Court regarding judicially imposed reapportionment plans:



> "Just as a Federal District Court, in the context of legislative reapportionment, should follow the policies and preferences of the state, as expressed in statutory and constitutional provisions, or in the reapportionment plans proposed by the state legislature, . . ." *White v. Weiser,* 412 U. S. 783 (1973) at page 795.

> "The remedial powers of an equity court must be adequate to the task but they are not unlimited. Here the District Court erred in so broadly brushing aside state apportionment policy without solid constitutional or equitable grounds for doing so." *Whitcomb v. Chavis,* supra, at page 161.

## CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below be reversed.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

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LARRY F. YORK
First Assistant Attorney General

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ELIZABETH B. LEVATINO
Special Assistant Attorney General

Counsel for Appellants
P. O. Box 12548
Austin, Texas 78711

## CERTIFICATE OF SERVICE

I, Larry F. York, First Assistant Attorney General of Texas, as of counsel for Defendants herein, hereby certify that true and correct copies of the above foregoing Appellant's Brief on the Merits have been served upon opposing counsel by placing copies in the mail, prepaid, to Mr. Phillip Crawford, Attorney at Law, P. O. Box 6277, Austin, Texas 78762, attorney for Plaintiff and Intervenor Chapman; Mr. Dave Richards, Attorney at Law, 600 West 7th Street, Austin, Texas 78701, attorney for Plaintiff Regester and Intervenors Wright, et al.; Mr. R. James George, Jr., Attorney at Law, P. O. Box 98, Austin, Texas 78767, attorney for Republican Party; Mr. Norman M. Bonner, attorney for Plaintiff Gaskin, at Suite 838, Baker Bldg., 7th and Houston, Fort Worth, Texas 76102; Mr. Don Gladden, attorney for Plaintiff Escalante, at 702 Burk Burnett Building, Fort Worth, Texas 76101; and Mr. George Korbel, attorney for Mexican American Legal Defense Education Fund, 501 Petroleum Commerce Building, 201 North St. Mary's Street, San Antonio, Texas 78205.

Witness my hand this _____ day of August, 1974

_____

LARRY F. YORK



The State of Texas
Secretary of State

The attached are true and correct copies of a portion of the canvassed returns for the Democratic Party in the first primary election in 1974. The returns were certified to the Secretary of State by the Democratic Executive Committee on May 28, 1974.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this

6th day of August, A. D. 19 74

Mark W. White, Jr.
Secretary of State

EXHIBIT A

STATE SENATOR - District 26:

| | |
|---|---|
| Joe Bernal | 17,727 |
| David Evans | 12,393 |
| Frank Lombardino | 17,162 |
| | 47,282 |

STATE SENATOR - District 27:

| | |
|---|---|
| Raul L. Longoria | 35,899 |
| Ray A. Mayo | 3,033 |
| Henry Sanchez, Jr. | 14,330 |
| | 53,362 |

STATE SENATOR - District 28:

| | |
|---|---|
| H. J. (Doc) Blanchard | 22,129 |
| Kent Hance | 24,898 |
| | 46,296 |

STATE SENATOR - District 30:

| | |
|---|---|
| Charles Finnell | 26,841 |
| Ray Farabee | 36,692 |
| | 63,533 |

STATE REPRESENTATIVE - District 1:

| | |
|---|---|
| Hamp Atkinson | 9,536 |
| Cahill Hitt | 3,336 |
| George M. Thomas, Jr. | 1,050 |
| | 13,922 |

STATE REPRESENTATIVE - District 2:

| | |
|---|---|
| Ronald Wafe | 6,707 |
| Byron Torry | 3,889 |
| Buck Florence | 6,957 |
| | 17,553 |

STATE REPRESENTATIVE - District 3:

| | |
|---|---|
| Ben Z. Grant | 10,070 |

STATE REPRESENTATIVE - District 4:

| | |
|---|---|
| Roy Blake | 11,637 |

STATE REPRESENTATIVE - District 5:

| | |
|---|---|
| Herman Adams, Jr. | 10,415 |

STATE REPRESENTATIVE - District 6:

| | |
|---|---|
| Arthur (Buddy) Temple III | 11,758 |
| A. Traylor | 3,199 |
| | 14,957 |

STATE REPRESENTATIVE - District 7-1:

| | |
|---|---|
| Paul Dennis | 1,432 |
| Albert J. Price | 10,590 |
| C. L. Chester Slay, Jr. | 8,385 |
| Alton Stanley | 6,614 |
| | 27,061 |



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STATE REPRESENTATIVE - District 30:

| | |
|---|---|
| John Wilson | 14,610 |

STATE REPRESENTATIVE - District 31:

| | |
|---|---|
| Harry Norris | 5,812 |
| D. R. (Tom) Uher | 7,010 |
| | 12,822 |

STATE REPRESENTATIVE - District 32, Place 1:

| | |
|---|---|
| Charles Evans | 43,263 |

STATE REPRESENTATIVE - District 32, Place 2:

| | |
|---|---|
| Bill Hilliard | 25,832 |
| Alton R. Hall | 5,908 |
| Bobby G. Webber | 22,708 |
| | 54,448 |

STATE REPRESENTATIVE - District 32, Place 3:

| | |
|---|---|
| W. C. (Bud) Sherman | 43,653 |

STATE REPRESENTATIVE - District 32, Place 4:

| | |
|---|---|
| Gibson (Gib) Lewis | 43,460 |

STATE REPRESENTATIVE - District 32, Place 5:

| | |
|---|---|
| Tom Schieffer | 43,995 |

STATE REPRESENTATIVE - District 32, Place 6:

| | |
|---|---|
| Joe Spurlock II | 44,946 |

STATE REPRESENTATIVE - District 32, Place 7:

| | |
|---|---|
| Dave Finney | 42,223 |

STATE REPRESENTATIVE - District 32, Place 8:

| | |
|---|---|
| Chris Miller | 26,109 |
| Roy E. English | 25,869 |
| Rhnin H. Forbes | 3,466 |
| | 55,444 |

STATE REPRESENTATIVE - District 32, Place 9:

| | |
|---|---|
| Doyle Willis | 43,425 |

STATE REPRESENTATIVE - District 33:

| | |
|---|---|
| Garnell A. Baker | 1,280 |
| Lloyd Frederick | 2,859 |
| Ed Mayes | 4,263 |
| Loy R. Norris | 1,516 |
| G. L. Swanson | 3,401 |
| | 13,319 |

STATE REPRESENTATIVE - District 33-M:

| | |
|---|---|
| Nick L. Bert | 2,421 |
| Bill Human | 1,540 |
| Earl Sloan | 1,877 |
| | 7,838 |

STATE REPRESENTATIVE - District 33-N:

| | |
|---|---|
| Utah Kirk | 1,965 |
| Paul B. Ragsdale | 2,735 |
| Marcus Ranger | 838 |
| | 5,538 |

STATE REPRESENTATIVE - District 33-O:

| | |
|---|---|
| Eddie Bernice Johnson | 2,107 |

STATE REPRESENTATIVE - District 33-P:

| | |
|---|---|
| "Dordie" Johnson | 3,379 |

STATE REPRESENTATIVE - District 33-Q:

| | |
|---|---|
| Janice Kaufman | 4,608 |

STATE REPRESENTATIVE - District 33-R:

| | |
|---|---|
| Jim Ashley | 4,137 |

STATE REPRESENTATIVE - District 34:

| | |
|---|---|
| Jerry (Nub) Donaldson | 9,441 |

STATE REPRESENTATIVE - District 35, Place 1:

| | |
|---|---|
| Lane Denton | 15,075 |

STATE REPRESENTATIVE - District 35, Place 2:

| | |
|---|---|
| Lyndon Olson, Jr. | 15,100 |

STATE REPRESENTATIVE - District 36:

| | |
|---|---|
| Dan Kubiak | 10,291 |

STATE REPRESENTATIVE - District 37, Place 1:

| | |
|---|---|
| Mrs. Exalton W. Delco | 33,888 |
| Estes L. Lewis | 5,645 |
| John W. Mugge | 16,025 |
| Jace Minor | 7,109 |
| | 62,867 |

STATE REPRESENTATIVE - District 37, Place 2:

| | |
|---|---|
| Sarah Weddington | 55,901 |





STATE REPRESENTATIVE - District 37, Place 3:

| | |
|---|---|
| Ronald D. Earle | 52,527 |

STATE REPRESENTATIVE - District 37, Place 4:

| | |
|---|---|
| Wilson Foreman | 25,573 |
| Robert C. (Lou) McCreary | 7,245 |
| Gerald L. Weiss | 6,164 |
| Gonzalo Barrientos | 27,941 |
| | 66,923 |

STATE REPRESENTATIVE - District 38:

| | |
|---|---|
| Bennie Bock, II | 9,097 |

STATE REPRESENTATIVE - District 39:

| | |
|---|---|
| Tim Von Dohlen | 11,881 |

STATE REPRESENTATIVE - District 40:

| | |
|---|---|
| Joe Wyatt, Jr. | 6,983 |

STATE REPRESENTATIVE - District 41:

| | |
|---|---|
| R. A. Burgess | 2,239 |
| Leroy J. Wieting | 9,007 |
| | 11,246 |

STATE REPRESENTATIVE - District 42:

| | |
|---|---|
| W. G. (Bill) Coody | 8,206 |

STATE REPRESENTATIVE - District 43:

| | |
|---|---|
| Camm Lary, Jr. | 7,837 |

STATE REPRESENTATIVE - District 44:

| | |
|---|---|
| John R. Bigham | 4,167 |
| Elwood Smith | 822 |
| Bil Wilson | 3,040 |
| | 8,029 |

STATE REPRESENTATIVE - District 45:

| | |
|---|---|
| Sam L. Darden | 3,875 |
| Jim Green | 4,402 |
| Don Rains | 6,783 |
| | 15,060 |

STATE REPRESENTATIVE - District 47:

| | |
|---|---|
| Jon Newton | 11,687 |

STATE REPRESENTATIVE - District 48, Place 1:

| | |
|---|---|
| L. DeWitt Hale | 21,342 |



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STATE REPRESENTATIVE - District 70:

| | |
|---|---|
| E. L. (Lee) Davenport | 1,789 |
| Stanley C. Hausman | 3,366 |
| Susan Curley McBee | 6,093 |
| Dack Ratliff | 804 |
| Bill T. Williams | 1,167 |
| | 13,219 |

STATE REPRESENTATIVE - District 71:

| | |
|---|---|
| Paul A. Echols | 2,703 |
| James Kaster | 4,685 |
| | 7,388 |

STATE REPRESENTATIVE - District 72, Place 1:

| | |
|---|---|
| Robert M. O'Kelly | 10,690 |

STATE REPRESENTATIVE - District 72, Place 2:

| | |
|---|---|
| Richard E. Buck | 8,041 |
| Paul Moreno | 10,211 |
| | 18,252 |

STATE REPRESENTATIVE - District 72, Place 3:

| | |
|---|---|
| Ronald Coleman | 13,159 |

STATE REPRESENTATIVE - District 72, Place 4:

| | |
|---|---|
| Luther Jones | 12,481 |

STATE REPRESENTATIVE - District 73:

| | |
|---|---|
| John Hoestenbach | 4,367 |

STATE REPRESENTATIVE - District 74:

| | |
|---|---|
| Bill Clayton | 9,797 |
| Harvey R. Floyd | 2,551 |
| | 12,348 |

STATE REPRESENTATIVE - District 75, Place 1:

| | |
|---|---|
| Elmer Tarbox | 6,906 |
| Gene Gaines (Withdrawn) | 0 |
| Delwin Jones | 7,231 |
| Froy Salinas (Withdrawn) | 0 |
| Bob Vint | 4,271 |
| | 18,408 |

STATE REPRESENTATIVE - District 75, Place 2:

| | |
|---|---|
| R. B. McAlister | 11,160 |
| Jim Tolbur | 6,984 |
| | 18,144 |

STATE REPRESENTATIVE - District 76:

| | |
|---|---|
| James C. (Pete) Laney | 8,227 |

EXHIBIT A



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The State of Texas
Secretary of State

I, MARK W. WHITE, JR., SECRETARY OF THE STATE OF TEXAS, DO HEREBY CERTIFY that the attached three (3) pages are a true and correct copy of a document filed in this office by the State Democratic Executive Committee certifying the total votes cast for each candidate in Federal and District races in the 1974 Democratic Primary Run-Off in Texas.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this

1st day of August, A.D. 19 74

Mark W. White, Jr.
Secretary of State

EXHIBIT B

1974 DEMOCRATIC PRIMARY RUN-OFF

State Democratic Executive Committee
702 Brown Building
Austin, Texas 78701
June 15, 1974

EXHIBIT A
(Total votes cast for each candidate in Federal and District races in Texas.)

UNITED STATES CONGRESSMAN - District 21:

| | | |
|---|---|---|
| Nelson W. Wolff | 27515 | |
| Robert "Bob" Krueger | 29332 | |
| | 56847 | TOTAL |

STATE BOARD OF EDUCATION - District 24:

| | | |
|---|---|---|
| Carlisle Cravens | 4616 | |
| Virginia Currey | 3404 | |
| | 8020 | TOTAL |

STATE SENATOR - District 26:

| | | |
|---|---|---|
| Joe Bernal | 19411 | |
| Frank Lombardino | 19540 | |
| | 38951 | TOTAL |

STATE REPRESENTATIVE - District 2:

| | | |
|---|---|---|
| Ronald Wade | 5019 | |
| Buck Florence | 5920 | |
| | 10939 | TOTAL |

STATE REPRESENTATIVE - District 7-1:

| | | |
|---|---|---|
| Albert J. Price | 7842 | |
| C.L. Chester Slay, Jr. | 8520 | |
| | 16362 | TOTAL |

STATE REPRESENTATIVE - District 10:

| | | |
|---|---|---|
| J.L. Green, Jr. | 2690 | |
| Smith Gilley | 4142 | |
| | 6832 | TOTAL |

STATE REPRESENTATIVE - District 13:

| | | |
|---|---|---|
| Jimmy Mankins | 2884 | |
| T.P. (Pat) Moon | 1910 | |
| | 4794 | TOTAL |

STATE REPRESENTATIVE - District 32, Place 2:

| | | |
|---|---|---|
| Bill Milliard | 14739 | |
| Bobby G. Webber | 11155 | |
| | 25894 | TOTAL |

STATE REPRESENTATIVE - District 32, Place 8:

| | | |
|---|---|---|
| Chris Miller | 13562 | |
| Roy E. English | 12399 | |
| | 25961 | TOTAL |

STATE REPRESENTATIVE - District 33:

| | | |
|---|---|---|
| Ed Mayes | 2941 | |
| G.L. Swanson | 2366 | |
| | 5307 | TOTAL |





STATE REPRESENTATIVE - District 33-M:

| | | |
|---|---|---|
| Nick L. Bert | 1428 | |
| Earl Sloan | 1127 | |
| | 2555 | TOTAL |

STATE REPRESENTATIVE - District 33-N:

| | | |
|---|---|---|
| Utah Kirk | 1130 | |
| Paul B. Ragsdale | 2010 | |
| | 3140 | TOTAL |

STATE REPRESENTATIVE - District 37, Place 4:

| | | |
|---|---|---|
| Wilson Foreman | 17982 | |
| Gonzalo Barrientos | 18075 | |
| | 36057 | TOTAL |

STATE REPRESENTATIVE - District 45:

| | | |
|---|---|---|
| Jim Green | 2933 | |
| Don Rains | 5216 | |
| | 8149 | TOTAL |

STATE REPRESENTATIVE - District 57-B:

| | | |
|---|---|---|
| Lloyd Ballard | 1738 | |
| A.L. (Tony) Dramberger | 2941 | |
| | 4679 | TOTAL |

STATE REPRESENTATIVE - District 57-F:

| | | |
|---|---|---|
| John T. Davis | 4435 | |
| Guy Floyd | 5366 | |
| | 9801 | TOTAL |

STATE REPRESENTATIVE - District 57-G:

| | | |
|---|---|---|
| Tom Lee | 3957 | |
| Abraham D. Nibak | 5110 | |
| | 9067 | TOTAL |

STATE REPRESENTATIVE - District 57-H:

| | | |
|---|---|---|
| Donald M. Cartwright | 4475 | |
| John E. Stacey | 3389 | |
| | 7864 | TOTAL |

STATE REPRESENTATIVE - District 61:

| | | |
|---|---|---|
| Elmer J. Martin | 5749 | |
| O. Henry Young, Jr. | 2871 | |
| | 8620 | TOTAL |

STATE REPRESENTATIVE - District 63:

| | | |
|---|---|---|
| Michael N. Ezzell | 3891 | |
| C. Glenn Toombs | 2630 | |
| | 6521 | TOTAL |

STATE REPRESENTATIVE - District 70:

| | | |
|---|---|---|
| Stanley C. Hausman | 3123 | |
| Susan Gurley McBee | 6068 | |
| | 9191 | TOTAL |

STATE REPRESENTATIVE - District 75, Place 1:

| | | |
|---|---|---|
| Elmer Tarbox | 3120 | |
| Delwin Jones | 2366 | |
| | 5486 | TOTAL |

STATE REPRESENTATIVE - District 84:

| | | |
|---|---|---|
| Herman Lauhoff | 2269 | |
| C.L. Chuck Bertani | 1913 | |
| | 4182 | TOTAL |

STATE REPRESENTATIVE - District 100:

| | | |
|---|---|---|
| Bill Caraway | 1999 | |
| Jo Ann Gerhardt | 1479 | |
| | 3478 | TOTAL |

CRIMINAL DISTRICT ATTORNEY - Galveston County:

| | | |
|---|---|---|
| Ronald L. Wilson | 5528 | |
| Ralph Joseph Bernson | 4686 | |
| | 10214 | TOTAL |

EXHIBIT B



The State of Texas
Secretary of State

I, MARK W. WHITE, JR., Secretary of State of the State of Texas, DO HEREBY CERTIFY that the attached copies are true and correct copies of the Minutes of the Democratic Party of Texas County Convention of Travis County held on May 13, 1972 and filed in the Secretary of State's office on May 18, 1972.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this

30th day of July , A. D. 19 74

Mark W. White, Jr.
Secretary of State

EXHIBIT C



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MINUTES OF THE DEMOCRATIC PARTY OF TEXAS COUNTY CONVENTION OF Travis

COUNTY, TEXAS, HELD IN THE CITY OF Austin, TEXAS, ON May 13, 1972.

According to law, County Chairman Robert Snead (hereinafter referred to as Temporary Chairman) called the Democratic County Convention of Travis County, Texas, to order at 10 o'clock A.m. on May 13, 1972, in the City Coliseum Building, Austin, Texas.

The invocation was rendered by Reverend G. M. Relurford

The Temporary Chairman announced that this convention would be conducted in accordance with the terms and provisions of the Election Code and the Rules adopted by the party in accordance with Article 13.08 (b) of the Election Code, that the latest edition of Robert's Rules of Order shall govern parliamentary procedure, that a copy of the Rules adopted by the party were available for inspection and explained the ways in which actions at this convention will influence important party action and decisions at subsequent conventions.

Temporary Chairman announced that as provided in the Rules the County Executive Committee had elected the committees of the convention and the members of each committee are listed on the attached Exhibit "A" and said Exhibit "A" is made a part hereof for all intents and purposes.

Temporary Chairman announced the appointment of the following temporary officers for the purposes of conducting the temporary affairs of the convention, to-wit:

(a) Parliamentarians: John Coffee and Bob Kuhn

(b) Sergeant-at-Arms: Charlie Jones

(c) Secretary: Ann Wendler

(d) Assistant Sgt.-at-Arms: Craig Robinson

(e) Recording Clerk: Art Vickland

Temporary Chairman requested the Secretary to call the temporary roll of delegates. The roll was called and a quorum was present.

Temporary Chairman requested that the Chairman of the Credentials Committee make its report. The report was made by the Chairman, and the report [illegible] attached Exhibit "B" and marked Exhibit "B" hereto and made a part hereof for all intents and purposes. Upon motion duly made, seconded and carried by a majority vote, the report [illegible] of the Rules Committee, marked Exhibi "C" attached was adopted.

On motions duly made, seconded and adopted by majority vote the following permanent officers for the convention were elected:

(a) Chairman: Sam Houston Clinton, Jr.

(b) Secretary: Rita Cantu — Filed in the office of Secretary of State

(c) Sergeant-at-Arms: Charlie Jones

(d) Parliamentarians: Gretchen Raatz and Colin Carl

(e) Reading Clerks: Ann Lupot and William Reid — By [illegible] Deputy

(f) _____; _____

Temporary Chairman appointed _____

_____ to escort the Chairman, Secretary and Sergeant-at-Arms to the chair, and said permanent Chairman, Secretary and Sergeant-at-Arms were duly escorted to the chair and took their respective offices.

The Chairman announced that the Committee on Nominations was ready to make its report and the report was made by the Chairman of the Committee on Nominations and said report included a list of delegates and alternate delegates for the State Convention and Presidential State Convention. On motion duly made and seconded the report (as amended) was adopted by majority vote and a copy of the report marked Exhibit "D" is attached hereto and made a part hereof for all intents and purposes.

On motions duly made and seconded the convention by majority vote adopted the committee reports and Resolutions contained in the minute of the Secretary of the Convention marked Exhibits E _____ and made a part hereof for all intents and purposes.

1—Strike if not necessary.

As Permanent Chairman, I hereby certify the above minutes and the attached list of delegates and alternates chosen by and attached resolutions adopted by the county convention as the official action of the convention.

_____ Chairman

EXHIBIT C



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MINUTES
Travis County Democratic Party Convention
May 13, 1972

Sam Houston Clinton, Jr. was elected Permanent Chairman of the Travis County Democratic Convention and called the convention to order. The first order of business was the election of the Permanent Secretary. Those nominated were Rita Cantu and Irene Glass. Rita Cantu was elected Permanent Secretary of the Convention. In addition the following officers were chosen:

| | |
|---|---|
| Parliamentarians: | Gretchen Raatz<br>Colin Carl |
| Sergeant-at-Arms: | Charlie Jones |
| Asst. Sergeant-at-Arms: | Ronald Angel<br>Mr. Dick Benson<br>Mr. Gabriel Gutierrez<br>Mr. Bobby Guice<br>Mr. Shelby Hallmark<br>Mr. Mike Holman<br>Mr. T. J. "Pat" Holman<br>Mr. John Lands<br>Mr. Jeff Long<br>Mr. S.J. "Buddy" Ruiz |
| Reading Clerks: | Ann Lupot<br>William Reid |

The Chair recognized Vernon Briggs, Chairman of the Resolutions Committee, who announced that his committee was meeting behind the stage. He also announced the times that controversial resolutions were to be read and discussed by the Committee.

C. Dean Davis, Chairman of the Rules Committee, then presented a supplementary report as follows: (1) That should a delegate of a precinct caucus not be present at the county convention, that the chairman shall choose an alternate with the same presidential preference as that of the absent delegate. If no alternates are present who represent the same presidential preference as the absent delegate, the chairman shall select from those present. (2) That in case of tie in the election of delegates and alternates to the state convention, that a second vote be taken and if tie is not broken, the nominee representing the presidential preference expressed by a plurality of the precinct convention be declared to be elected. If issue cannot be resolved, the matter should be referred to the Nominations committee. (3) That the precinct caucuses be reminded of Rule 22 which states that one-third of the delegates of any

EXHIBIT E

EXHIBIT C

level should be of the sex opposite the rest of the delegation. The Chairman ordered the supplementary report to be adopted.

The Chairman then recognized Mr. Stuart Long, Chairman of the Nominating Committee. He announced the breakdown of the delegates and alternates as follows:

| | | |
|---|---|---|
| Delegates | McGovern | 62 |
| | Uncommitted | 12 |
| | Wallace | 9 |
| | Humphrey | 8 |
| | Total | 91 |
| Alternates | McGovern | 60 |
| | Uncommitted | 16 |
| | Wallace | 10 |
| | Humphrey | 5 |
| | Total | 91 |

The names of the delegates and alternates along with presidential preferences were read by the reading clerk. The delegates and alternates were approved by the convention. The committee went back into session to select the remaining 25 delegates and alternates from the at-large list of nominations.

The Chairman then recognized Vernon Briggs, Chairman of the Resolutions Committee for a reading of the resolutions.

1. Party Purity
. Be it resolved that the Democratic Party of Texas adopt a party purity rule to prevent cross-over voting in primary elections.
Adopted.

2. Full Legal Rights for 18 year olds
Be it resolved that the Democratic Party urge the governing and legislating bodies of the state of Texas to recognize and give all rights and responsibilities of adult citizens to all persons 18 years or older.
Adopted.

3. Resolution for Abolishment of the Practice of Capital Punishment
Be it resolved that the Democratic Party go on record as opposing capital punishment in any of its forms by the states and federal government.
Adopted.





4. Constitutional Convention
Whereas the present Constitution of Texas was adopted 96 years ago in a time before the complex problems of today were known; and Whereas the Present Constitution has been amended 201 times since its adoption; and Whereas the present Constitution has proved inadequate to cope with the progressive and complex problems of Texas' increasingly urban and industrial society; Therefore, be it resolved that an independent constitutional convention elected by the qualified voters of the respective legislative districts of Texas be convened, and that such convention rewrite the present Texas Constitution and submit same to the people for approval or rejection.
Adopted.

5. Expanded Day Care
Be it resolved that we Democrats of Travis County go on record as calling for a reordering of our priorities to allocate the estimated 20 billion dollars needed to assure child care for our nations children and that such money be allocated to creative solutions designed and implemented on the local and community level.
Adopted.

6. Ecology
Be it resolved that the air, water, and energy resources of the earth belong to all its inhabitants and that land, while it may be privately owned, may not be used in any way detrimental to the general interests of the people.

The practice of clear-cutting and strip-mining should be forbidden on all federal and state lands, and such private lands as shall be deemed fit for ecological preservation by competent ecological advice. Moreover, additional park and wilderness areas should be created for the benefit of the people and the preservation of nature. Specifically, the Big Thicket of East Texas is outstanding in the diversity of the flora and fauna thriving in a relatively small area. It is being destroyed daily. The Federal Government should acquire with due haste a minimum of two hundred thousand contiguous acres for the purpose of establishing of the proposed national park.
Adopted.

7. Alternatives to the Automobile
Be it resolved that modern systems of rapid transit be built in urban and interurban areas to alleviate the polluting effects of the private automobile. Furthermore, that the city, state and nation support and actively create hike and bike trails, both between cities and within cities.
Adopted.

8. Access to Government Files on Private Individuals
Be it resolved that every individual have the right to examine any file or dossier kept on him by any governmental or private agency and that he have the right to challenge any information that reflects upon his personal life, credit, rating, or political affiliation.
Adopted.

9. Access to Medical Care for Everyone
Be it resolved that all citizens, regardless of age, sex or race, be entitled to the benefits and opportunities our nation's abundance offers and that in order to ensure a basis of equality for all, especialy children and the aged, that a comprehensive system of national medical and dental care be established and financed by a responsible system of progressive taxation and closely supervised to prevent exploitation and profiteering.
Adopted.

10. Drug Rehabilitation - tabled

11. Abolishment of 70% Rule
Be it resolved that the 70% rule at precinct conventions be abolished.
Adopted.

12. Elimination of the oil depletion allowance. - Not adopted

The Chairman then recognized Karen Barkley, a member of the Nominating Committee for a supplementary report. The 25 member at-large delegation was: 15 for McGovern; 2 for Humphrey, 3 for Wallace, 4 were uncommitted; 1 for Robert Sneed.





13. Removal of Welfare Ceiling

Whereas a large number of people in the state of Texas are living in a state of poverty, and are dependent on public welfare, be it resolved that the Democratic Convention urge the legislature to place such decisions regarding the ceiling on all categories of welfare before the people of the state in the form of a constitutional amendment and begin action to initiate and support a guaranteed annual income for all citizens.
Adopted.

14. Police Hiring

Under present police employment practices there is no proportional representation of minorities. To understand the needs and to appreciate the culture of all groups and to enforce the law more justly: Be it resolved that all police force hiring be done on a basis of equal representation of all persons regardless of sex, race, sexual orientation and religion.
Adopted.

15. Party Rule

As the Democrats of Travis County deplore the delay with which the Democratic Party of Texas adopted the rules of our party and has made them practically inaccessible to members of the party; therefore, Be it resolved that the Travis County Democratic Convention as well as the Democratic Party of Texas insist upon the resignation of Roy Orr as Chairman of the State Democratic Executive Committee and all members of the Executive Committee who voted for these party rules, and also thank Mr. Anderson and Carin Patman for salvaging what they could and did of the rules.
Adopted.

16. Referendum Wording

Be it resolved that the Democratic Party deplores the wording of the referendum on the May 6th ballot and feel that it was difficult to understand the meaning thereof. Therefore, we urge that future referendums be worded in clear, concise language.
Adopted

17. Students on Board of Regents

Be it resolved by the Democratic Convention of Travis County that two students be voting members of the Board of Regents of every state college and university in the state of Texas. The delegation from this convention is instructed to present this resolution to the Resolutions Committee of the State Convention and to the convention as a whole.

Adopted.

18. Location of Industrial Wast Sites

Be it resolved that the Democrats of Travis County urge the Water Quality Board to ban the industrial waste site presently located 1½ miles east of Austin.

Be it further resolved that this assemblage be on record for priority legislation that will demand the following controls in future disposition of wast:

1. All industrial waste must be rendered harmless to the environment.

2. Recycling of waste to preserve our dwindling natural resources.

3. No burying of industrial waste until there is firm data assuring such practice is not a future health hazard.

Adopted

19. Food Commodity and Food stamp program

Be it resolved that the Travis County Commissioners request the U.S. Department of Agriculture to activate the food stamp and commodity programs in Travis County so that eligible persons may choose which program is suitable to his own situation.

Adopted.

20. Commendation of Robert Sneed

Be it resolved to commend Robert Sneed as a dedicated, effective and impartial Democratic County Chairman.

Adopted.

21. Restrict War Powers of the President

Be it resolved that the Travis County Democratic Convention go on record as supporting the action of the U.S. Senate in its passage of the War Powers Bill, S2956. This bill states that the President of the United States cannot commit U.S forces so long as the Congress has not declared war for a period exceeding 30 days without the consent of Congress.

Adopted.





The Chairman again recognized Stuart Long, Chairman of the Nominations Committee. Mr. Long thanked the members of the committee. Mr. Long recommended the adoption of the total list of delegates and alternates that his committee had selected. Motion passed and precinct delegates and alternates, at-large delegates and alternates along with ex-officio delegates and alternates were approved.

22. Cease Foreign and Military Aid to Certain Countries

Be it resolved that the United States government cease all aid to the military dictatorship in Greece and the Portugese Colonies in Africa and denounce the apartheid policies of South Africa.

Adopted.

23. Abolish Electoral College

Whereas the present electoral college method of electing our national President and Vice Precident is cumbersome and does not always represent the vote of the majority of our citizens, Be it resolved that the National Democratic Party go on record for a Constitutional Amendment to abolish the Electoral College method of such election; and that in place thereof the President and Vice President be elected by a popular vote of the citizens of the United States of America, and that there be provision for a run off election if necessary, such that the national President and Vice President be elected by a clear majority.

Adopted

24. Election of delegates to the National Convention

Be it resolved that any delegates to the Democratic National Convention from the Senatorial District which includes Travis County must have been elected at the Precinct and/or County Convention level.

Adopted

25. T.V. debate of gubernatorial candidates

Whereas the people can only cast their votes intelligently when they are fully aware of the respective positions of these candidates for public office; therefore: be it resolved that the Democratic Party County Convention of Travis County strongly urge the candidates for the Democratic nomination for Governor of Texas to meet in public debate on statewide television and radio for a full and frank exchange of views on the crucial issues facing the people of Texas.

Adopted.

26. Regulation & Licensing of sidearms
Be it resolved that all privately owned sidearms be registered and licensed by the state.
Adopted.

27. Pay Raises for Non-teaching personnel at UT
Be it resolved that the Texas Legislature in their next session grant a pay raise for all state supported colleges and Universities non-teaching personnel, including personnel and assistants, such raise to be more than commensurate with a cost of living increase. Adopted.

28. Condemning Anonymous Leafleting
Whereas parties unknown are disseminating slanderous leaflets about candidates for office and whereas these parties refuse to disclose their identity.
Be it resolved that this convention heartily condemns such cowardly action.
Adopted.

29. Censure of Dick Nichols
Be it resolved that the citizens of Travis Co. recognize the fact that the citizens of Travis Co. recognize the fact that councilman Dick Nichols is a divisive force to the citizens of our County, particularly, in racial and ethnic matters, and therefore urge his removal from the Human Opportunities Corporation Board in Austin.
Be it resolved that the Austin Ctiy Council's appointments to the HOC Board be investigated. Adopted.

An announcement was made that the name of Wilson Foreman be added to the list of ex-officio members. The motion was not favorable and therefore Mr. Foreman withdrew his name.

30. A resolution in the University of Texas Systems Administration
Whereas, the University of Texas Systems has the financial resources, and academic potential to be one of the nation's great centers for learning & research; and
Whereas, this potential is being dissipated daily by the inadequate leadership and ill conceived priorities of University System Chancellor Charles M. (Mickey) LeMaistre, and University Regents Frank C. Erwin, Jr. and John Peace: and
Whereas, the University of Texas - Austin has lost over 30 of its most distinguished professors, in the last 18 months; and
Whereas, the University Systems has spent over $600,00 on a wall around the University at Austin, over $1 million on a private home for the University Chancellor, and is presently





spending over $9 million on new University Systems Adminstration offices; and
Whereas; the System Administration has allocated less than $600,00 on books for the working libarary at Austin; and
Whereas, these expenditures are examples of the ill conceived and damaging priorities of Chancellor LeMaistre, and Regents Erwin, and Peace,
Be it resolved by the Travis County Democtatic Convention, that: Chacellor LeMaistre, Regent Erwin, and Peace be censured for their activity against the public interest; and
That, this convention stand resolved to change the priorities of the University of Texas System Administration and build for Texas a University of the first class.
Adopted.

31. Women's Rights
Whereas: it is a woman's human and constitutional right to control her own body; and
Whereas: these rights have been denied by archaic laws and opinions: therefore:
The people of Travis County call for three basic and vital reforms:
a. That all abortion laws be repealed, so that abortion by qualified medical or paramedical personnel is available to anywoman who desires it:
b. That there be no forced sterilization by law or as a condition for receiving welfare or an an undesired result of giving birth in a charity hospital: and
c. That the contraceptive laws of Texas, which do not allow the dissemination of contraceptive information or devices to persons under 18 without parental permission, be repealed.
Be it further resolved that the recommendations of the President's Commission on Population Growth be adopted.
Adopted.

32. Anti-War Resolution
Whereas the US intervention in the Vietnamese Civil War is a senseless, cruel, dishonorable failure which has caused enumerable Vietnamese casualties, cost the deaths of over 60,00 American soldiers, divided our own people, and aroused the fear and distruet of other nations; and cost over $1 hundred billion in the tax payers money.
Therefore be it resolved that:
1. The US should immediately and completely withdraw all

land, sea, and air forces from Indochina and the surrounding waters:

2. The US should immediately begin a program of reparations, administered through the United Nations, to compensate the people of Indochina for destruction caused by US military operations:

3. That all prisoners of war be immediately exchanged by both sides.

4. That General amnesty be declared for all individuals who refused to participate in the war as a matter of conscience;

5. And be it further resolved that this convention condemn President Nixon's recent escalation of the war by the mining of the Port of Haiphong Harbor.

6. Be it also resolved that this convention instruct Rep. J.J. (Jake) Pickle to either introduce or vote for legislation that requires a withdrawal of all U.S forces from all of Indochina now with conditions attached, and be it further resolved that he do so within the next two (2) weeks.

Adopted.

33. Equal Opportunity Resolution.

Be it resolved that it be a goal of State employment that the hiring of State employees represent the proportionate ethnic composition of our State.

Adopted.

34. Soviet Jews

Be it resolved that we the Democratic Convention are in sympathy with the plight of the Soviet Jews and that we feel they should be allowed to emigrate to Israil from the Soviet Union without recriminations from the Soviet government.

Adopted.

35. Taxation Resolution

Be it resolved that Federal Taxation System be reformed, including a thorough reform of present capital gains laws so that net capital accretions will no longer either be taxed at half regular rates or be allowed to go completely untaxed, including an ending of the heavy advantages presently falling to the mineral industries, including an ending of the present exclusion of interest on state and local securities, and ending the advantages that allow extremely low effective rates of estate taxations.





Be it further resolved that we reject the Nixon Adminstration's intention to adopt new value added taxation.

Adopted.

36. Busing

Be it resolved that the Democrats of Travis County, Texas, support the desegregation of all public institutions because that is the law of the land. We look forward to the desegragation of the schools and quality education for all. Until all schools in all neighborhoods are equal and until all neighborhoods are open to all Americans regardless of race, in compliance with the Civil Rights Acts of 1866 and 1964, we approve two way busing as a desegregation tool, provided that the inconveniences fall equally on all races alike.

Adopted.

37. Gay Rights

Since the state has not just cause for regulating private sexual acts between consenting partners, of the age of consent, we call upon the Texas Legislature to repeal Article 524 (the Sodomy Law) of the Texas Penal Code in line with similar re- from action by the States of Colorado, Hawaii, Idaho, Illinois, Oregon and Vermont.

Amendment: Since homosexuals are often the victims of discrimination in housing, jobs, insurance rate and taxation for no other reason than the general public's ignorance and prejudice concerning homosexuality, we call upon the state and national Democratic parties to support, and the Texas Legislature and the US Congress to pass legislation designed to protect homosexual men and women from this type of arbitrary discrimination, and to guarantee full civil and human rights for homosexuals.

Adopted.

38. Marijuana Resolution

Whereas thousands of lives have been ruined by the punitive aspects of the law concerning the possession of marijuana.

And whereas the penalties are cruel and unusual punishment and similar to those imposed during Prohibition and reflect cultural prejudices: Be it resolved that this convention goes on record as requesting that the governor of this state and the Texas State Legislature act to free from our jails and prisons all those convicted of simple possession of marijuana and that the records of those convicted be cleared of these felony con-

victions.

And be it further resolved that the Texas Legislature and the US Congress regulate the sale and distribution of marijuana just as they do alcohol today.

Be it further resolved that this convention asks Governor Smith to bring up the question of marijuana at the special session. Adopted.

39. Abolishment of the Texas Rangers

Whereas, the Texas Rangers are an outdated relic of Texas history, the Texas Rangers are often used to intimidate and repress Mexican-Americans and Blcaks; the Texas Rangers are duplicating efforts of other law enforcement agencies therby mitigating against state-wide coordination of law enforcement efforts; and the Texas Rangers are an unnecessary economic burden to the taspayer; therefore;

Be it resolved that the Democrats of Travis County, Texas urge the State of Texas to abolish the Texas Rangers.

Adopted.

40. Frances T. Farenthold Commendation

Whereas Frances Farenthold is the only nominee for Governor of Texas with the courage, integrity, humanitarianism and dedication to progress needed to lead the State of Texas in the 1970's.

Be it resolved that the Travis County Democratic Convention endorses Frances Farenthold for Governor of Texas and urges all Texans to work for her election.

Adopted.

41. Commending the Delegates of Precinct 238

Be it resolved that the Chair commend the delegates of Precinct 238 for their united gift to the Executive Committee to meet convention expenses.

Adopted:

42. Texpirg Resolution- A Resolution to Endorse the Texas Public Interest Research Group.

Whereas, the Texas Public Interest Research Group's purpose is to articulate and pursue public interest issues of general student concern, such as government ethics, environmental preservation, voting rights, and sex and race discrimination; and,

Whereas, over 50,000 Texas College students have signed the Tex PIRG petition and;

Whereas, the Texas Democratic Party should encourage constructive student activism; therefore,





Be it resolved that: The Travis County Democratic Party endorse the Texas Public Interest Research Group and urge all college administrators and governing board to support the establishment of TexPIRG.

Adopted.

43. Bilingual Education

Whereas thousands of intelligent children are being deprived of an equal start in education because their native tongue is not English,

Be it resolved that this body go on record as favoring complete bilingual and multi-cultural education and that no person be discriminated against in the classroom because of his native language.

Adopted.

44. Rights of State Employees

This body resolves that all employees of the state shall have the right to organize and to bargain collectively.

Adopted.

45. Resolution on State Regulation of Utilities

Be it resolved that the State of Texas establish a body that will regulate the utilities of the state, including telephone, gas and electric companies, and that said utility commission be formed so that it is as free as possible from legislative and lobby pressures.

Adopted.

46. Media Role in political compaigns

Be it resolved that TV and radio stations contribute their alloted public service time to debates for candidates in the run-offs to cut down on the excessive cost of running for office.

Adopted.

47. Drug Rehabilitation

Be it resolved by the Travis County Democratic Convention that because the current anti-drug programs are ineffective in stopping increasing addiction among our population, that a program focusing on rehabilitation of addicts rather than their incarceration be adopted as a part of the Texas Democratic Party Platform.

Adopted.

48. Resolution to commend Sam Houston Clinton.

Adopted.

Minutes
Page Fourteen

Chairman Clinton recognized a motion for the convention to be adjourned. It was seconded and the convention voted unanimously to adjourn.

Respectfully submitted,

Rita Cantu

Rita Cantu
Secretary

EXHIBIT C



The State of Texas

Secretary of State

I, MARK W. WHITE, JR., Secretary of State of the State of Texas, DO HEREBY CERTIFY that the attached copies are true and correct copies of the Proceedings of the Travis County Convention of the Democratic Party held on May 11, 1974 as filed in the Secretary of State's office on May 16, 1974.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this

30th day of July, A. D. 19 74.

Mark W. White, Jr.
Secretary of State

EXHIBIT D



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PROCEEDINGS OF THE (COUNTY-SENATORIAL DISTRICT #_____)

CONVENTION OF THE DEMOCRATIC PARTY HELD ON MAY 11, 1974, IN

Austin, Travis COUNTY, TEXAS

• • • • • • • • • •

The convention was called to order at 10:30 o'clock, A. M.

by Ken Wendler.

Thereupon, after proper motion and vote, State Senator

Lloyd Doggett was elected permanent chairman and

Gerald Hill was elected permanent secretary

of the convention. Credential committee chrmn Jay Barnes, Rules Comm. Chrm C Carl, Nominations Comm. Chrm. Jeff Friedman., Resolutions Comm. Chrm. Sam Perry

Upon motion made and duly seconded, the following persons were

elected as delegates and alternates to the State Democratic Convention.

SEE EXHIBIT "A"

Upon motion made and duly seconded, the attached resolutions

were adopted.

1. Adoption of Fair Play Rules (reform rules)
2. Party Affiliation amendment added to Texas Election Code
3. Change of title from Chairman to Chairperson
4. Proration of absentee votes back to precinct for delegate strength.
5. Impeachment of President
6. Prohibition of non-returnable containers and provision of waste disposal/ recycling systems.
7. Repeal of Utility refund contract ordinance in Austin.
8. Prison Reform
9. Free speech at National Convention
10. School financing(increased salaries)
11. Equal Rights Amendment be ratified by the Texas Legislature
12. Participation by Young Democrats on State Democratic Executive Committee.
13. Support of Single-member districts.
14. Full civil rights to homosexuals
15. Comprehensive national health insurance program
16. Opposition to further develpment of nuclear fission power, and request for moratorium on such development.
17. Land use planning
18. Seven year limitation on maintenance and distribution of criminal rec ord to protect the right of privacy of all people (& ex-offenders)
19. Establishment of a rape squad in Austin
20. Right to abortion at Brackenridge Hospital
21. Reorganization of Board of Regents of University of Texas System
22. Prohibition of smoking in certain specified public places.
23. Opposition to any increase in state sales tax or gasoline tax.
24. Implementation of state-wide cooperative effort to conserve existing energ
25. Endorsement of oil price rollback & bringing energy production under national control.
26. Precinct level representation at state and national conventions.
27. Reorganization of Travis County Grand Jury to reflect views of all citizen
28. Presence of Spanish-speaking person at voting station, and Spanish in
29. Improvements to conditions at Johnston High School
30. HUD Flood Insurance Program participation.
31. Minority Citizens in law enforcement agencies.
32. Commendation of John Connally for joining Republican Party.
33. Minority hiring by Department of Public Safety and Texas Rangers.
34. Exploitation by foreign interest in Africa

Gerald Hill by Sally Watkins (Asst. Sec.) _____ Permanent Chairman

Permanent Secretary

35. Refraining from granting powers of condemnation to the Bicentennial Celebr Committee.
36. Decriminalization of possession and use of marijuana by adults over 18 yrs

# EXHIBIT D